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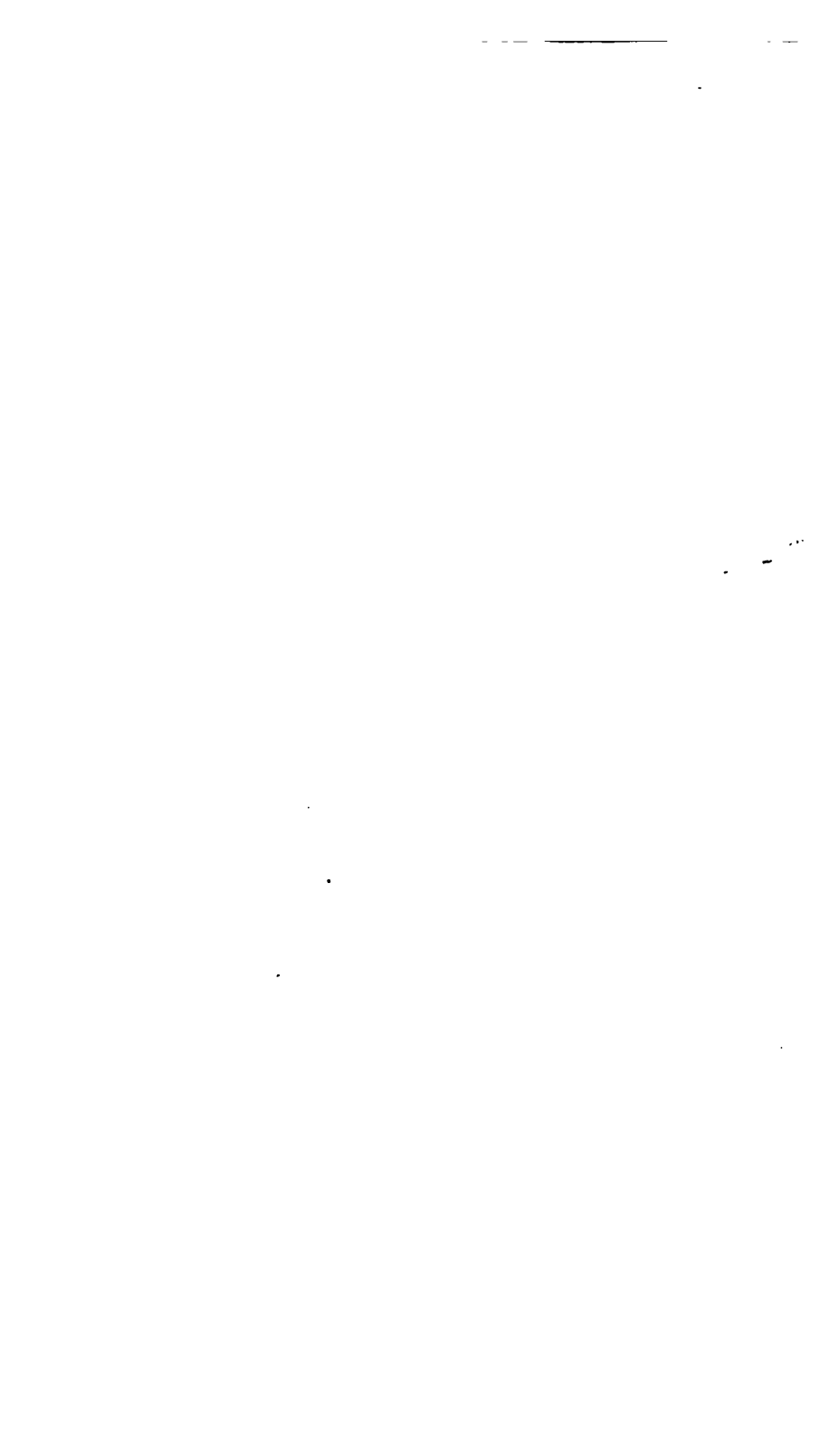
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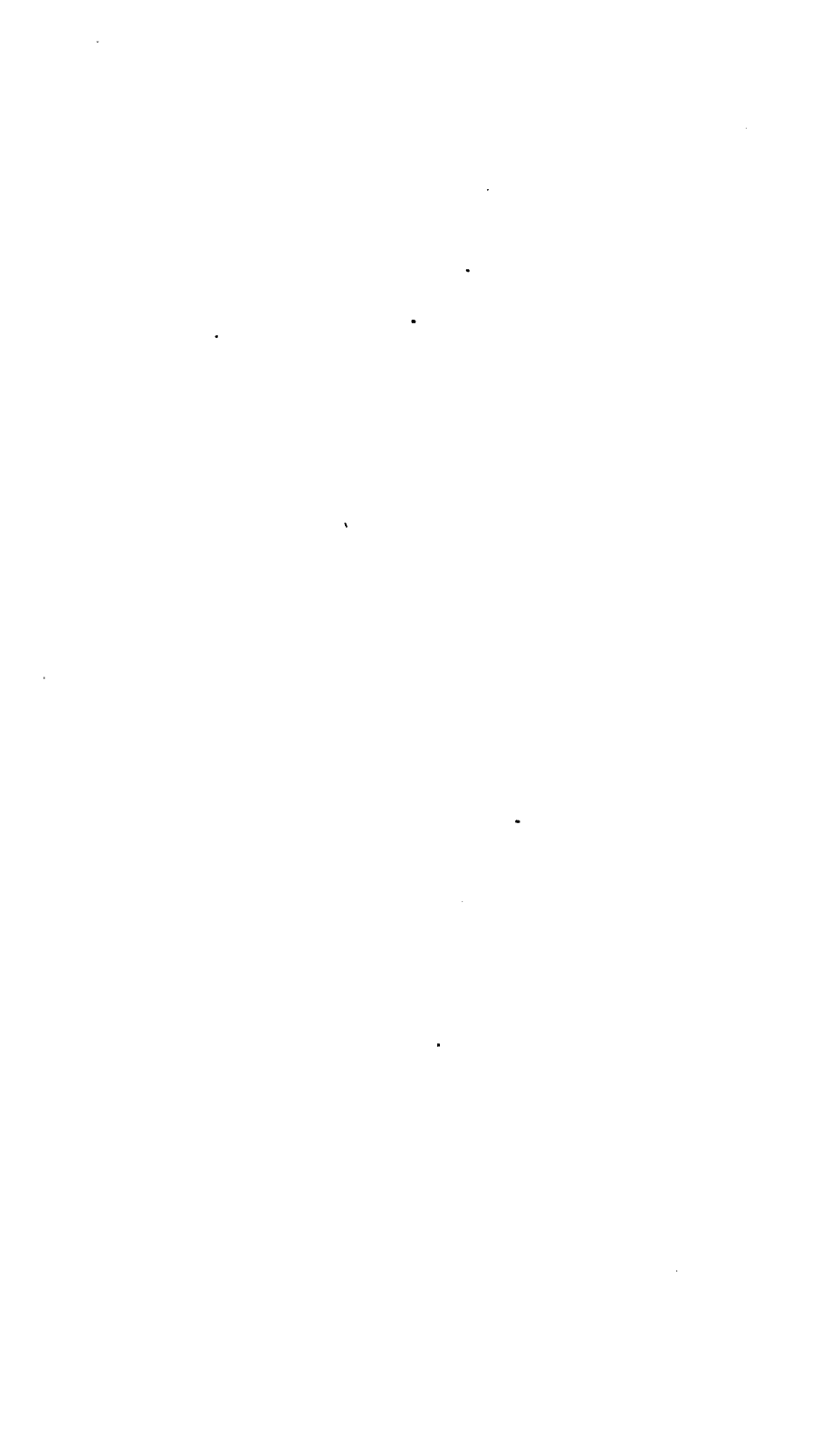
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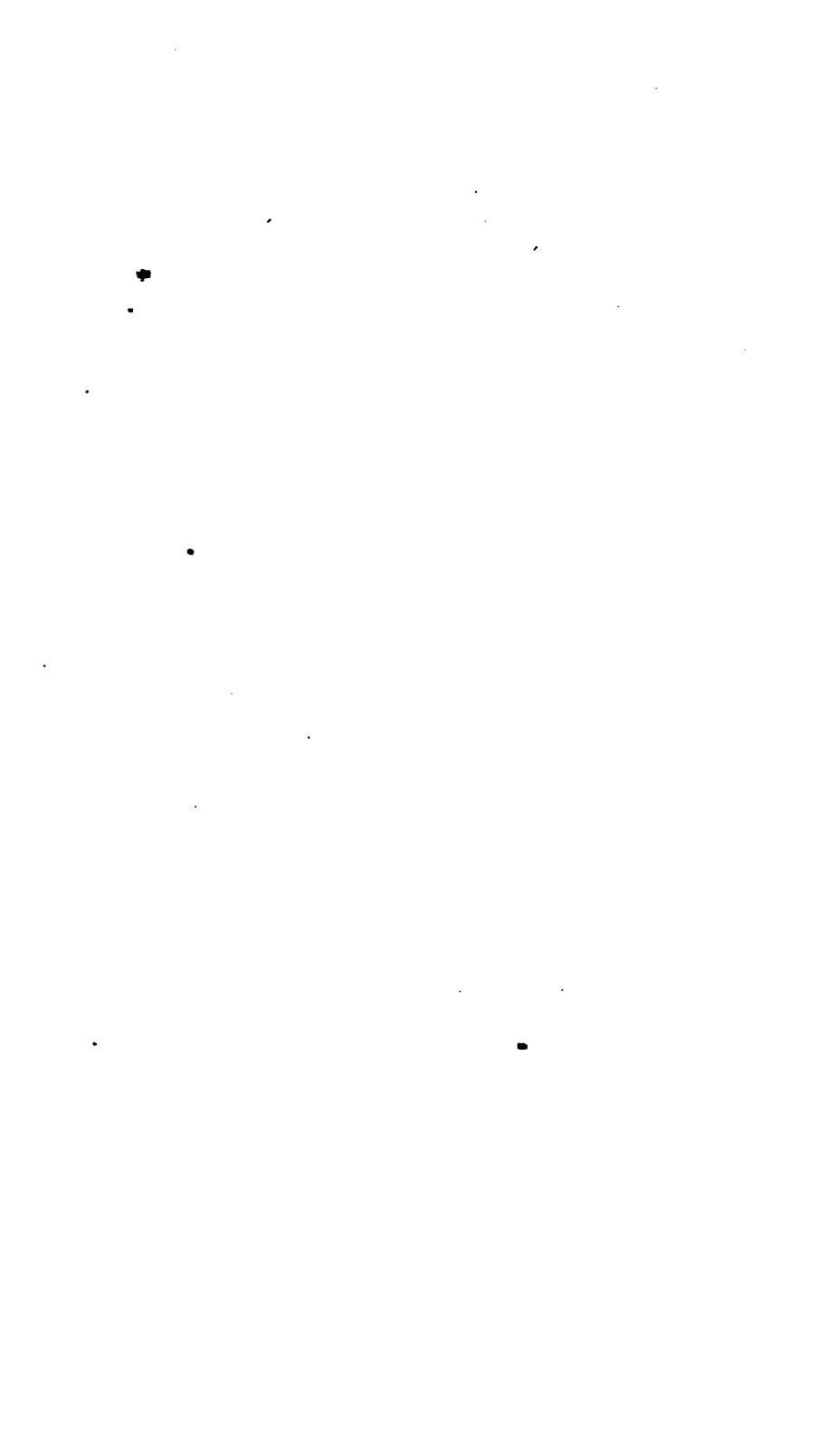
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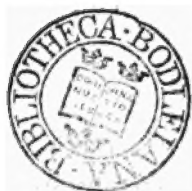
THE LAW AND PRACTICE
OF
ELECTIONS,
AND
ELECTION COMMITTEES,
WITH
AN APPENDIX
OF STATUTES AND FORMS.

BY
JOHN CLERK, Esq.,
OF THE INNER TEMPLE, BARRISTER AT LAW.

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PREFACE.

UPON the passing of the "Corrupt Practices Prevention Act," in 1854, it appeared to the Author that it would be advisable to publish at once a short treatise pointing out the important changes introduced into the Law of Elections by that statute. At the time that the Chapters relating to the Practice at Elections and Corrupt Practices were published, the Author had to apologise for presenting an incomplete work upon the subject of elections. The prospect of an immediate change in the mode of trying election petitions was the excuse for the course then pursued. The measure introduced by Lord John Russell and Sir James Graham, for this purpose, in the session of 1854, has not been further proceeded with. The Author has now completed the remaining chapters on the law of elections and the practice of election committees, and has

introduced all the cases and decisions both of committees and of courts of law down to the present time.

Since the earlier Chapters were published some changes have been made in the mode of holding Elections in Scotland. These have been introduced in their proper places. As the first part of this work was already, to a considerable extent, in the hands of the public, the cases of *Grant v. Guinness* and *Cooper v. Slade* have been added, in continuation of the Chapter on "Corrupt Practices."

The Author has added a separate Chapter on "Scrutiny," which is substantially the same as that in the work on the Practice of Election Committees, published by him in 1852. The plan then adopted by him has, he believes, met with the approbation of the Profession. The whole of this Chapter, as well as of the other portions of the work of 1852, have been carefully revised.

In citing cases, the Author has considered it advisable to omit, as far as possible, the conflicting decisions of Committees upon points of evidence,

which are to be found in the older reports and treatises on Election Law. These decisions are seldom based on any legal principle, and to quote them only serves to encumber the text and embarrass the reader. At the present day, it is not unusual for Committees to desire the counsel to confine themselves to the citation of the decisions of the Superior Courts. The Author trusts that the present work, in which he has endeavoured to comprise in one volume the whole of the law relating to Elections and the trial of Controverted Elections, may prove of service. The subject of the "Registration of Electors" has been intentionally omitted. The enactments which have made the register conclusive of the continuance of the qualification, and have limited the power of Committees to open the register, have had the effect of practically excluding from the consideration of Election Committees all questions relating to the right of any person to be upon the register.

TEMPLE, *May*, 1857.

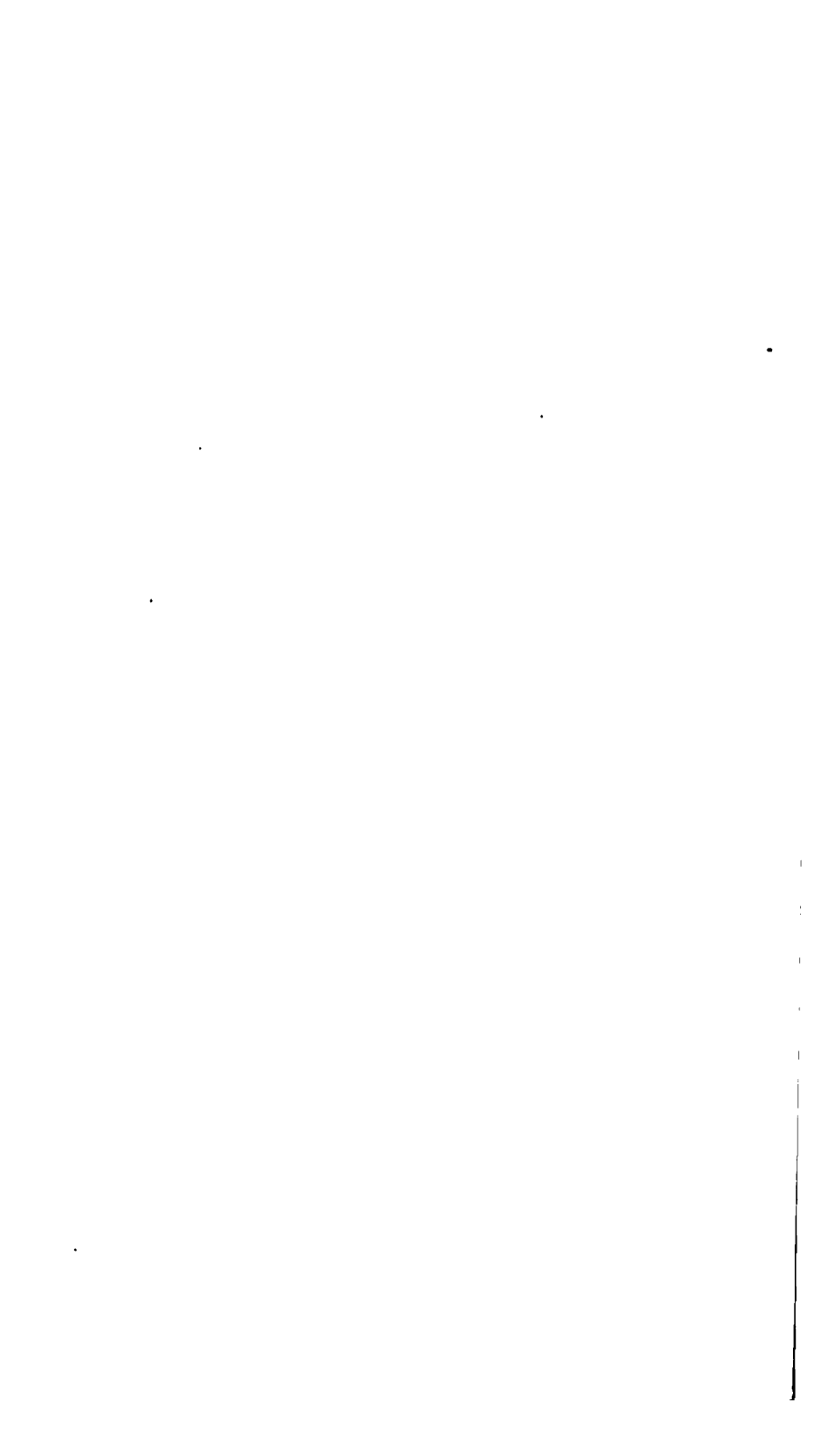


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XIV

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ADDENDUM.

REG. v. BARNWELL. Q. B. 5th May, 1857.

"Undue Influence."

A Rule Nisi for a criminal information had been obtained against the defendant for exercising *undue influence* upon a voter of the name of Trehearn, at an election. The voter was a baker, and supplied the defendant and certain charitable foundations with bread. The charge against the defendant was that he threatened to withdraw his custom and that of the charitable establishments from the voter unless he voted according to the defendant's wish. The defendant denied these charges in his affidavits; and Lord Campbell C. J., in discharging the rule observed, "The legislature has passed an Act which creates a new offence, that of 'undue influence;'" he then read the 5th section of the Act, and added, "Now, a *prima facie* case for the application of the Act was clearly made out, for it was stated that Mr. Barnwell, with a view to intimidate a voter and to induce him to vote, did threaten to take away the 'church bread,' and did threaten to take away his own custom. In either case there was intimidation within the meaning of the Act of Parliament.

I cannot concur in the meaning which has been put upon the Act during the argument, which would make the Act a mere nullity, *viz.*, that it merely forbids that which would have been unlawful before. The Act creates a new offence, and makes that unlawful which was lawful before, provided it be done with a view to induce persons to vote or not to vote at the election of members of Parliament. Accordingly a threat to withdraw the charity bread and even to withdraw his own custom, made during the election, would have been an infringement of the Act of Parliament. After the election was over, of course every person would be at liberty to employ whom he pleased as his tradesmen, but not during the election to threaten that he would withdraw his custom. That is just the same as if a landlord were to say—‘ You are my tenant from year to year, and unless you vote for my candidate I will give you notice to quit, and turn you out of the house.’ To prevent such threats being made use of during the election the present Act of Parliament was passed” (a). The Court thought the charges were substantially though not satisfactorily answered and discharged the rule without costs.

(a) See Report in *Times*, 6th May, 1857.

LAW AND PRACTICE OF ELECTIONS.

CHAPTER I.

1. *Proceedings previous to an Election.*
 2. *Proceedings at an Election.*
 3. *Declaration and Return.*
-

1. *Proceedings previous to the Election.*] All elections for members to serve in Parliament take place by virtue of writs, issued out of the Crown Office in Chancery. Upon a dissolution of Parliament by proclamation, which is the ordinary method of dissolving, the proclamation at the same time states, that orders have been given to the Lord Chancellors of Great Britain and Ireland, forthwith to issue writs for the calling together of a new Parliament. The Queen with the advice of her Privy Council, by warrant under her hand, directs the Lord Chancellors to cause writs to be issued, which writs are to be returnable on a day named in the warrant. The writs are made out by the clerk of the Crown in Chancery, who for this purpose is an officer of the House of Commons.

If a vacancy occurs during a session, a motion is made in the House that a writ do issue for the vacant seat, and the Speaker of the House of Commons then

orders the clerk of the Crown, by a warrant under his hand, to make out the writ for a new election. When the new writ issues in consequence of the election made upon a former writ having been declared void, it is usual for a special writ to issue stating that circumstance. In one case, *Aldborough*, where the election had been annulled for treating, the second writ issued without noticing the former writ and election, but stated the vacancy as occasioned by the death of *Sir M. Wentworth*, upon whose death the void election had taken place (a). Such, however, is not the form in use at the present day (b).

If a vacancy, caused by the death of a member, or by a member becoming a peer of Great Britain and being summoned to the Upper House by a writ under the Great Seal, occur during a recess of the House, the Speaker may issue a warrant ordering a new writ to be made out in the place of such member. In order to enable the Speaker to issue his warrant, he must receive a certificate, signed by two members of the House of Commons, stating the cause of the vacancy. The writ may be issued in any recess of the House, either by prorogation or adjournment, provided the application for the writ is made so long before the next meeting of the House, that the writ may be issued before such day. The Speaker cannot issue the warrant unless the return of the member, whose seat is now vacant, had been brought into the Crown Office fifteen days before the last sitting of the House; nor

(a) 12 Journ. 19; 3 Luders, 500.

(b) See the *Ilchester case*, 2 Peck., and Warren's Manual, App. 442.

can he issue his warrant, in case any petition against the *election or return* of the member causing the vacancy was depending at the time of the recess (*a*). As soon as the Speaker has received the certificate or application, signed by the two members, he must give notice thereof in the *Gazette*; he must not issue the warrant until fourteen days after such notice (*b*). In the case of a member becoming bankrupt, provision is made for the issue of a new writ in certain cases; but no such writ can issue if a petition is depending against the *election or return* of the bankrupt member (*b*).

Writs for a General Election.] Until recently, the period which elapsed between the *teste* of the writ and the day on which such writs were made returnable, was *fifty* days. By the 7 & 8 Wm. & M. c. 25, it was enacted that there should be *forty* days between the *teste* and the returns of the writs of summons; this was virtually extended by the 22nd Article of the Treaty of Union with Scotland to *fifty* days; that being the time that it was stipulated should elapse before the meeting of the first Parliament after the Union. From the year 1707 until the year 1852, that period of *fifty* days was the one recognised as the proper time to elapse between the *teste* and return of the writs. In the year 1852, a short act was passed, which after reciting "That the time required by law to intervene between the date of the proclamation and the day appointed for the meeting of Parliament may reasonably be shortened," enacts, "That the time so to be appointed may be any time not less than *thirty-five* days after the date of the proclamation."

(*a*) 24 Geo. 3, c. 26.

(*b*) 52 Geo. 3, c. 144.

In *England* and *Wales* the writs are now sent at once to the returning officer. Up to the time of the passing of the 16 & 17 Vict. c. 58, all writs were directed to the sheriffs of the several counties, requiring them to cause knights to be elected for their respective counties, and also citizens and burgesses for the several cities and boroughs within their shires. The sheriff, upon the receipt of such writ, made out a precept to the returning officer of the city, or borough, directing him to cause the election to be made.

This mode of proceeding still continues at *Irish* elections, but a much simpler practice has been introduced in English elections.

The writs for elections in *England* and *Wales*, are now to be directed to the person who is the officer effecting the return. The writ to the sheriff of a county will in future require him to make a return for his county only. The writ for making any election for the Universities of Oxford and Cambridge, will be directed to the Vice Chancellors of the Universities; and the writs for every borough, town corporate, port or place returning members in England and Wales, will be directed to the returning officer of such boroughs, towns corporate, ports and places. The writ, therefore, hereafter will be so framed and expressed as to carry into effect this enactment.

In *Scotland*, the writs for the election of members to serve for shires, or for any city or borough, are directed to the sheriff of the shire, who is the returning officer not only of the county, but also of the boroughs within it. The case of districts of burghs is provided for in the Scotch Reform Act, 2 & 3 Wm. 4, c. 65. If the burghs are in different counties,

the sheriff of one of the counties is pointed out in a schedule as the person who is to receive the writ and make the return.

The mode in which writs are to be forwarded to the persons to whom they are directed, has been the subject of express enactment (*a*). The messenger, or pursuivant of the Great Seal is to deliver the writs directed to the sheriffs of London, or sheriff of Middlesex, at the offices of such sheriffs; and where the offices of any sheriff, or other persons to whom writs ought to be directed are in London, or within five miles thereof, the messenger is to deliver the writs at such offices.

In all other cases, the writs are to be taken to the General Post Office in London, and there delivered to the Postmaster General, or to such persons as he may have deputed to receive the same; and such deputies on receipt of the writs, are to give an acknowledgment in writing expressing the time of such delivery, keeping a duplicate of the same signed by the parties delivering the writs.

The writs are dispatched by the first post, free of postage, under cover to the officers to whom they are respectively directed. The postmaster of the town where such officer holds his office, must forthwith carry the writs to that office, and deliver them to the officer or his deputy; and he must take a memorandum acknowledging the receipt of the writ; and stating the day and hour when the writ was delivered. This memorandum signed by the postmaster, is then transmitted to the Postmaster General, who makes an

(*a*) 53 Geo. 3, c. 89.

entry thereof, and files the memorandum along with the duplicate of the messenger's acknowledgment mentioned before.

In order that the Postmaster General may know where the offices of the persons are, to whom writs are to be directed, it is provided that the Chancellor of the county of Lancaster, the Bishop of Durham, or his chancellor, the Chamberlain of Chester, the Warden of the Cinque Ports, the sheriffs and stewards of the several cities, counties and stewartries, and all other persons to whom such writs for the election of members to serve in Parliament ought to be, and are usually directed, or their deputies, shall send up to the Postmaster General an account of the place where they hold their offices; and so from time to time, with all convenient speed, as often as the place for holding such offices shall be changed. The Postmaster General is to make a list of such places, and hang it up in some public place in the General Post Office. Sect. 2 of 53 Geo. 3, c. 89.

As soon as the writ has reached the hands of the sheriff, mayor, or other returning officer, he must indorse upon the back of it the day he received the same.

Who is Returning Officer.] In former times disputes often arose at elections as to who was the proper returning officer. At the present time it is well known who is the returning officer of any particular place. The Reform Act, 2 Wm. 4, c. 45, nominates the returning officers for certain of the new boroughs there created. For those new boroughs for which no person is mentioned, the sheriff of the county is to appoint a returning officer every year in the month of

March. No person having once served is compellable to serve again. No person in holy orders, nor any churchwarden or overseer of the poor within any borough, can be the returning officer. Any person qualified to be elected as a member of Parliament, may claim to be exempted from serving the office. In order to escape from the duty, he must, *within one week* after he shall have received notice of his appointment, make oath as to his qualification before any justice of the peace, and notify the same to the sheriff. In the *Wakefield case*, Bar. & Aust. 271, Mr. H., who had acted as returning officer for several years before the election then in question, gave notice to the sheriff some months after his re-appointment, but just at the time that a dissolution was expected, that he was anxious to decline the office. He wrote to the sheriff, that "having already served the office of returning officer, and being now a candidate, he begged to tender his resignation, and hoped on the grounds above stated it would be accepted." The sheriff proceeded as if this was a legal resignation of the office, and appointed another person in the room of Mr. H.

Mr. H. stood at the election, and was returned, but was unseated on petition, on the ground that he was the returning officer *de jure*. The seat was then claimed by the candidate who was in a minority at the election, but had given notice to the electors of the disqualification of Mr. H. It was argued that as Mr. H. was the returning officer *de jure*, no one else could hold a valid election. But the committee decided the election to have been well holden by the officer appointed by the sheriff, and gave the seat to the petitioning candidate.

The House of Commons has always upheld elections made by the returning officer *de facto*, although he may not have had a legal title to the office (a). If the office of returning officer should at any time be vacant in any city, borough, or town, the sheriff of the county must appoint some fit person to act as such officer during the vacancy (b).

Duties of Returning Officer.] Having thus briefly considered who is the officer who is charged with the business of holding the election, it is proposed to point out in the next place what are the several duties which he has to discharge. These are all expressed very clearly and minutely in the different enactments on this subject. At the present day if the returning officer uses the most ordinary discretion, it will be impossible for him to miscarry in the fulfilment of his duties.

Notice of Holding Election.] The first thing that the returning officer has to do upon the receipt of the writ, is to give notice of the time and place of holding the election.

English Counties.] The time for holding county elections is fixed by the 16 & 17 Vict. c. 68, s. 2.

Sect. 2. "Whereas by the fourth section of the Act of the twenty-fifth George the third, chapter eighty-four, it is provided, that immediately after the receipt of the writ for making any election of a knight or knights to serve in Parliament for any county or shire in England or Wales, and endorsing on the back thereof the day of receiving the same,

(a) Roe on Elections, 443, 446.

(b) 6 & 7 Wm. 4, c. 101, s. 3; and 6 Vict. c. 18, s. 99.

March. No person having once served is compellable to serve again. No person in holy orders, nor any churchwarden or overseer of the poor within any borough, can be the returning officer. Any person qualified to be elected as a member of Parliament may claim to be exempted from serving the office. In order to escape from the duty, he must, *within one week* after he shall have received notice of his appointment, make oath as to his qualification before any justice of the peace, and notify the same to the sheriff. In the *Wakefield case*, Bar. & Aust. 271, Mr. H., who had acted as returning officer for several years before the election then in question, gave notice to the sheriff some months after his re-appointment, but just at the time that a dissolution was expected, that he was anxious to decline the office. He wrote to the sheriff, that "having already served the office of returning officer, and being now a candidate, he begged to tender his resignation, and hoped on the grounds above stated it would be accepted." The sheriff proceeded as if this was a legal resignation of the office, and appointed another person in the room of Mr. H.

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Want of title in the returning officer will not inva-

lidate the election (a). If the office of returning officer is vacant at the time of the election the sheriff is himself to execute the writ (b). This contingency cannot happen in boroughs under the Municipal Reform Act, for in these, if the mayor is dead, absent or incapable of acting, the Town Council elect one of the aldermen to fill his place (c).

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(a) Roe on Elections, 443, 446, *post*, 358.

(b) 17 & 18 Vict. c. 57; this act omits to repeal 6 Vict. c. 18, s. 99.

(c) 5 & 6 Wm. 4, c. 76, s. 57.

as by law required, it should and might be lawful for the sheriff of such county and he is thereby required, within two days after the receipt thereof, to cause proclamation to be made at the place where the ensuing election ought by law to be holden of a special county court to be there holden for the purpose of such election only on any day (Sunday excepted) not later from the day of making such proclamation than the sixteenth day nor sooner than the tenth day: And whereas it is expedient to limit the time for proceeding to such elections: "Be it therefore enacted, That hereafter any such special county court, for the purpose of the election of a knight or knights to serve in Parliament for any county, riding, parts, or division of any county in *England* or *Wales* shall be holden on any day (Sunday, Good Friday and Christmas Day excepted) not later from the day of making such proclamation than the *twelfth* day nor sooner than the *sixth* day; provided that this section shall not apply to the election for any county of a city or of a town."

The time for making the *proclamation* is not altered; it is to be within *two* days after the receipt of the writ (a).

Notice in English Boroughs.] The same act (b) repeals the 3 & 4 Vict. c. 81, and provides in lieu thereof.

"That in every city or town being a county of itself, and in every borough, town corporate, port, or place, returning or contributing to return a mem-

(a) County elections must be held "betwixt the hours of *eight* and *eleven* before noon." 23 Hen. 6, c. 14, s. 2.

(b) 16 & 17 Vict. c. 68.

ber or members to serve in Parliament in *England* and *Wales*; the officer, to whom the duty of giving notice for the election of such member or members belongs, shall proceed to election within *six* days after the receipt of the writ or precept (*a*), giving *three clear days*' notice at least of the day of election, exclusive of the day of proclamation and the day of election."

Although the sheriff, or other returning officer, might expose himself to censure for not giving the proper notice, it is not probable that any election would be avoided on that account at the present day, unless it could be proved that, the result of the election was affected by the irregularity (*b*). In a recent case, *Rye*, (1848) P. R. & D. 112, where insufficient notice of holding the election had been given, the seat was abandoned without argument, although the sitting member had been the only candidate at the election. This case proceeded upon a misapprehension of the law of Parliament on this subject, and can never be cited as an authority.

Notice at Scotch Elections.] The sheriff to whom the writ for elections in Scotch *counties* is directed must endorse on the writ the day on which he received it, and must then, within *two* days thereafter, announce a day for the election, which day shall be not less than *six* nor more than *twelve* days after the day on which he received the writ; 18 Vict. c. 24. Intimation of holding the election is to be given as directed in 2 & 3 Wm. 4, c. 65, s. 28.

(*a*) No precept issues now, as the writ goes directly to the returning officer in England.

(*b*) Orme on Elections, 16; 1 Frazer, 369; *post*, 365.

In the case of *Orkney* and *Shetland*, the provisions of the Scotch Reform Act, so far as they relate to the fixing and announcement of the day of election and the interval to elapse between the receipt of the writ and the day of election, are not altered. See 2 & 3 Wm. 4, c. 65, s. 31.

Notice in Scotch Burghs.] In Scotch burgh elections the sheriff to whom the writ for any burgh or district of burghs is directed is to endorse on the back of the writ the day on which he received it, and must within two days thereafter announce a day or days for the election or elections, which day or days shall be not less than *four* nor more than *ten* days after the day on which the writ was received. The sheriff is to give due intimation by affixing notices on the doors of the parish churches, and by advertising, in the manner directed in the Scotch Reform Act (a). Two districts of burghs, commonly known as the *Wick* and *Ayr* burghs, are excluded from the operation of this act, and are governed in this respect by the provisions of the Reform Act (a). See 5 & 6 Wm. 4, c. 78. The proper sheriff to execute writs for districts of burghs is pointed out in Schedule (L.) to the Reform Act.

Irish Counties.] Here the sheriff, having endorsed upon the writ the day he received it, within two days after the receipt, must make proclamation of the time and place of holding the election, between ten in the morning and two in the afternoon ; he must then on the same day affix a notice, signed by himself (b), on the doors of the county court-house of the time of holding the election, and he must hold the election

(a) 2 & 3 Wm. 4, c. 65, s. 28.

(b) *2nd Sligo*, 1848, P. R. & D. 211.

not sooner than the *tenth* day, nor later than the *sixteenth* day after making the proclamation and affixing the notice (a).

In Irish Boroughs.] The returning officer must proceed to election within *eight* days after the receipt of the writ or precept, giving *three clear days'* notice at least of the day appointed for the election, exclusive of both the day of proclamation and the day appointed for the election (b).

It seems to be agreed, that the notice of the time and place of the election may lawfully be given on a *Sunday* (c). As to the manner of giving notice, it cannot be too widely distributed. No particular method is fixed by statute.

Form of Notice.] The recent statute 17 & 18 Vict. c. 102, (The "Corrupt Practices Prevention Act, 1854"), has provided an express form of notice, to be given at *all elections* in England, Scotland, and Ireland.

Sect. 11. "For the more effectual observance of this act, every returning officer to whom the execution of any writ or precept for electing any member or members to serve in Parliament may appertain or belong, shall, in lieu of the proclamation or notice of election heretofore used, publish or cause to be published such proclamation or notice of election, as is mentioned in Schedule (B.) to this act, or to the like effect." (d).

With regard to the signature of the proper officer,

(a) 1 Geo. 4, c. 11, s. 5.

(b) 9 & 10 Vict. c. 30.

(c) Orme, 63. Rogers on Elections, 10.

(d) The forms of notice for counties and boroughs will be found in the Appendix, in the Schedule to the 17 & 18 Vict. c. 102.

which it will be seen is required by the form given in the Schedule, it may be observed that it is not necessary that the notices published and affixed to the walls should be actually signed by the returning officer. The name of the officer may be printed at the foot of the notice. *2nd Sligo*, P. R. & D. 211. It was there objected that the election was void, because the notice required by the 1 Geo. 4, c. 11, s. 5, had not been given. That act required the mayor to affix in the usual public place in the borough, a notice *under his hand* of the time and place of holding the election. The name of the mayor had been printed at the foot of the notice, by his direction. The committee at once decided against the objection, and held the notice to be sufficient.

The time of day at which notices are to be given of elections in *Great Britain*, is fixed by the 33 Geo. 3, c. 64. "All notices to be given of the time and place of any election, shall be given publicly, at the usual place or places within the hours of *eight* in the forenoon and *four* in the afternoon, from the 25th of October to the 25th of March inclusive, and within the hours of *eight* in the forenoon and *six* in the afternoon from the 25th of March to the 25th of October. And *no notice* shall be deemed or taken to be a good or valid notice for *any* purposes, or to take any effect whatsoever, which shall not be made and published in the manner and within the time of day aforesaid."

It has been said by a learned author, that an election, when the provisions of this statute are neglected, will be utterly void (*a*). It may however be doubted,

(*a*) Simeon, Add. xvii. But see *Orkney and Zetland case*, 1 Frazer, 369. *Post*, 365.

whether a committee would now hold the election to be void, because the notice had been irregular. The language of this act is certainly very strong; and a notice given at any other than the proper time, will be the same as no notice at all. Were an election to be holden without any notice at all from the returning officer, if it should appear that candidates had been formally proposed and a poll demanded, and that the electors had given their votes at the election of such candidates, the subsequent discovery of the irregularity would probably not be considered at the present day sufficient to avoid the election (a). At the same time the officer who made the blunder would be inexcusable.

Place of election.] In counties the place of election is to be the most public and usual place of election. 7 & 8 Wm. 3, c. 25.

The Reform Act, 2 Wm. 4, c. 45, ss. 12, 13, prescribes the places where the county courts are to be holden for the new divisions of counties. There is no particular place fixed for holding elections in boroughs, but there is always some customary place where they are held (b).

Preparations for a Contest.] The proper statutable notice of holding the election having been given, the returning officer must next make preparations for the convenient holding of the election, and taking the poll, if that should become necessary. He must therefore consider the probability of a contest taking place at the election. It is not often that there can be much

(a) Orme on Elections, 16, *post*, 365.

(b) Rogers on Elections, 11.

doubt upon this subject. The previous canvassing usually gives ample indications of the intended struggle.

The returning officer is sometimes placed in a situation of difficulty with regard to the incurring of expense in the erection of polling booths, which may not be required. By sect. 68 of 2 Wm. 4, c. 45, the returning officer in English boroughs is directed to give public notice of the situation, division, and allotment of the different booths *two* days before the commencement of the poll. As the day of polling in English boroughs is now the day after the nomination or day of election, the returning officer must have arranged the polling booths before he knows for certain whether there will be a contest or not. It is only at *contested* elections that the candidates are liable to defray the expenses of erecting polling booths; and until the time of election, it cannot be known whether a candidate who has been prosecuting an active canvass, will go to the poll. Unless he goes to the poll, he is not a candidate within the meaning of the 71st sect. of the 2 Wm. 4, c. 45, and therefore not liable for the expenses of the booths. *Muntz v. Sturge*, 8 M. & W. 302. It will therefore always be prudent for the returning officer to get an undertaking from the several candidates before the day of nomination, to pay a proportionate part of the expense of the booths.

The sheriff or returning officer may, instead of erecting booths, hire houses for the purpose of taking the poll; but by a recent enactment it is provided that, "no poll at any election for members of Parliament in England and Wales, shall be taken at

any *inn, hotel, tavern, public house*, or other premises licensed for the sale of beer, wine or spirits; or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates, expressed in writing." 16 & 17 Vict. c. 68, s. 7.

A similar provision as to public houses, &c. is contained in the 16 Vict. c. 28, s. 4, with regard to elections in Scotland.

No nomination shall be made or election holden of any member for any city or borough in any church, chapel, or other place of public worship. 2 Wm. 4, c. 45, s. 68.

Sections 64 and 68 of the English Reform Act give directions as to the mode of erecting polling booths. In boroughs, not more than 600 are to vote at one compartment.

On the requisition of any candidate, or of any elector being the proposer or seconder of any candidate, the booths or compartments shall be so divided that not more than 100 electors shall be allotted to poll in each booth or compartment. 5 & 6 Wm. 4, c. 36, s. 4. The candidate or elector making the requisition shall pay all expences incident upon the division.

The word candidate here would no doubt have a different interpretation from that given to the same word when used in the 71st sect. of 2 Wm. 4, c. 45. The case of *Muntz v. Sturge* (a) decided that the word candidate, in that section, meant one who went

(a) 8 M. & W. 302; but see definition of a candidate in "The Corrupt Practices Prevention Act," 17 & 18 Vict. c. 102, s. 38.

to a poll; but here the demand for the additional accommodation may be made before the nomination day by a candidate who afterwards declines a poll; he would nevertheless be liable to the additional expense incurred in consequence of the requisition (a).

Irish Elections.] The arrangements with regard to polling booths at Irish elections are contained in the 13 & 14 Vict. c. 68. At contested elections in counties, not more than 600 are to poll in a booth; but on the requisition of a candidate, or proposer or seconder of a candidate, the booths shall be so arranged that not more than 300 shall poll at each booth. At *borough* elections, 400 may poll; but upon the requisition of a candidate, &c., not more than 200 are to be allotted to each compartment. In each case the persons demanding the additional accommodation are liable for the expense.

The expense of booths is provided for in sect. 19 of 13 & 14 Vict. c. 68. By sect. 20 of the same act, the sheriff or other returning officer must, before the day fixed for the polling, cause to be provided for the use of each booth, a true copy of the register of electors, so far as such electors are allotted or appointed to vote at each booth. The names must be arranged in alphabetical order, and the returning officer must certify every copy to be true. He must also make and print a statement or specification of the local situation of the

(a) As all the enactments on this subject are set out fully in Mr. Rogers's work on Elections, they are here given very concisely. Particular attention, however, is called to the recent enactments.

different booths ; and of the division or description of electors allotted to each booth. This must be affixed to each booth, in large letters, on some conspicuous part of it.

Scotch Elections.] The arrangements to be made by the sheriff with regard to polling booths, and the preparations for the election are to be found in 2 & 3 Wm. 4, c. 65, and in 5 & 6 Wm. 4, c. 78. Some additional provisions are contained in 16 Vict. c. 28. A power is there given to the sheriff, with the consent of the Lord Advocate, to increase or alter the number of polling places ; any contemplated change in this respect must be duly advertised. By section 4, the sheriff, if required by any of the candidates on or before the day of nomination, must provide two or more booths, compartments, halls, rooms, or other places for polling at each polling place ; with this proviso already referred to, that no poll shall take place at any premises licensed for the sale of beer, wine, or spirits ; nor in any place directly communicating with such licensed premises, except with the *written* consent of all the candidates.

Appointment of Deputies and Poll Clerks.] In order that the poll may be duly taken, proper superintending officers must be appointed to act at every polling place.

In *England* the returning officer is guided by the enactments in the Reform Act. Sect. 65 empowers the sheriff to appoint deputies, and clerks to take the poll in counties. And sect. 68 gives the returning officer the same power at borough elections. The remuneration of such officers is fixed by the 71st section of 2 Wm. 4, c. 45. The deputies are to receive two

guineas, and the poll clerks one guinea. The sheriff or other returning officer must before the day fixed for the election, cause a true copy of the register of voters to be made for the use of each booth; and this copy he must certify to be true.

The *Scotch* Reform Act, 2 & 3 Wm. 4, c. 65, s. 27, empowers the sheriff to appoint substitutes to superintend the taking of the poll. Such substitute is to have the assistance of a clerk or clerks, to be appointed by the sheriff, with the concurrence of the candidates, if they can agree, and if not then by the sheriff clerk of the county. Each poll clerk is to have an authenticated copy of the register.

Sect. 40 provides what is to be the remuneration. The poll clerks are to be paid one guinea each. And each substitute is to receive a fee, in no case exceeding three guineas. In the same section are contained the provisions with regard to the expense of erecting booths, &c.

In *Ireland* the sheriff is empowered to appoint deputies and poll clerks by 13 & 14 Vict. c. 68, s. 4, and the returning officer has the same power in boroughs by sect. 14. The deputies are to receive two pounds a day each; and the poll clerks one pound (sect. 19). This section also contains the regulations with regard to the expense of erecting booths, &c.

In the selection of deputies, the returning officer should be careful to appoint persons upon whose discretion and calmness of temper he can place reliance.

Although the duties to be discharged by the returning officer and his deputies are now purely ministerial, it may frequently happen that they may be placed in situations demanding calmness and self-possession. A

sudden disturbance may arise, and a deputy, at a considerable distance from the sheriff or returning officer may have to decide at once whether it will be necessary to adjourn the taking of the poll to another day. It is obvious that it would be most improper to employ a timid person, who might consider every drunken disturbance as a serious riot likely to impede the business of the election.

No questions of law have now to be decided during an election; but the deputy ought to be thoroughly aware of what his duty is with regard to receiving the votes of registered electors, and recording tendered votes; and also as to how far he is justified in permitting any alteration to be made in the poll books, where the name of a voter has been erroneously recorded. These matters will be considered hereafter. All that has been here described are things to be done before the real struggle of the election begins.

2. *Proceedings at the Election.*

The Nomination.] All preliminary matters having been arranged, the returning officer proceeds at the day and hour named to commence the important business of the election. It will be his duty to take care that every effort on his part has been made to prevent confusion and disturbance. It will always be prudent for him to have a certain number of special constables sworn in. He must be guided in the number by the probability of there being any serious riots, and the likelihood of such constables being called upon to act.

By a recent act, voters though they are not prohibited from being special constables, cannot be com-

pelled to be so ; and they will not be liable to any fine for refusing to act. 17 & 18 Vict. c. 102, s. 8.

In the first place, the sheriff or other returning officer reads the writ, by the authority of which he then holds the election. Before the passing of the 16 & 17 Vict. c. 68, the returning officer in boroughs used to read the precept which he had received from the sheriff of the county, and which was his authority for holding the election ; but now that the authority for holding the election proceeds immediately from the Crown Office in Chancery to the returning officer, he will no longer have any precept from the sheriff, but will have for his authority the writ itself. This act applies only to *England and Wales*. The sheriff is the returning officer at all *Scotch* elections, and in *Ireland* the law is unchanged. Having read the writ, the sheriff or other returning officer must then at once take the oath prescribed, by the 2 Geo. 2, c. 24, s. 3, which oath is as follows :

"I *A. B.* do solemnly swear, That I have not, directly nor indirectly, received any sum or sums of money, office, place or employment, gratuity or reward, or any bond, bill or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use, or benefit or advantage, for making any return at the present election of members to serve in Parliament ; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes."

The oath may be administered by any justice or justices of the peace of the county, city, corporation or borough, where the election is being had ; if there be none such present, then any three electors present

may administer such oath. The oath so taken is to be recorded at the sessions of the county or other place.

Before the passing of the recent "Corrupt Practices Prevention Act, 1854," the sheriff or other returning officer was required to read the whole of the Bribery Act, 2 Geo. 2, c. 24, openly before the electors there assembled. This is now no longer necessary as the whole of that act, with the exception of the *third* section, has been repealed by the Corrupt Practices Prevention Act, 1854. Those portions of the act, however, which relate to the taking of the oath by the returning officer, and the penalties on him for taking a false oath or neglecting to take the oath, remain in full force (a).

In places where the right of election is partly in freemen, the returning officer must next read the 3 Geo. 3, c. 15, commonly called the "Durham Act:" by the 8th section of that act, London and Norwich are exempted from its operation (b).

At *New Shoreham*, the 11 Geo. 3, c. 55; at *Cricklade*, the 22 Geo. 3, c. 31; at *Aylesbury*, the 44 Geo. 3, c. 60, must be read respectively.

The returning officer having concluded these formal proceedings, then calls upon the electors present to propose the candidate. Each candidate is proposed and seconded. The candidates address the electors, and

(a) The whole of this act, with the exception of the 3rd section of it, was extended to Scotland, by the 33rd section of the 16 Geo. 2, c. 11; that 33rd section being now repealed, no part of the repealed act of 2 Geo. 2 now extends to Scotland.

(b) Rogers on Elect. 14.

then the common practice is to call upon the electors present to declare, by a show of hands, whom they select among the several candidates.

This form is only gone through where there are more candidates proposed than there are vacancies to be supplied. It is curious that the Scotch Reform Act, 2 & 3 Wm. 4, c. 65, provides in sect. 29 as to counties, and in sect. 30 as to boroughs, that if no more than the necessary number of candidates to fill the vacancies be proposed at the time of the proclamation for the choice of the electors, such candidates are *upon a show of hands* to be declared duly elected (a).

The requiring the persons present, the great majority of whom are in all cases *non-electors*, to express by a show of hands their choice of a candidate, is a mere form. It is of service only for the purpose of ascertaining whether any of the candidates proposed have the intention of formally demanding a poll. It often happens that persons are proposed for the mere purpose of enabling them to make a speech to the crowd assembled round the hustings.

Any omission on the part of the returning officer to ask for a show of hands, or any similar expression of popular opinion; or any irregularity in the mode of granting the poll, would be no sufficient grounds for afterwards impugning the validity of the election.

“Where a poll is demanded the election commences with it, as being the regular mode of popular elections; the show of hands being only a rude and imperfect declaration of the sentiments of the electors. It often happens that on a show of hands that person

(a) Clerk. Elec. Com. 75.

has a majority, who on a poll is lost in a minority ; and if parties could afterwards recur to the show of hands, there would be no certainty or regularity in elections. I am of opinion, therefore, that where a poll is demanded, it is an abandonment of what has been done before, and that everything anterior is not of the substance of the election nor to be so received." Sir Wm. Scott, in *Anthony v. Seger*, 1 Hag. C. Cons. C. 13, on the election of a churchwarden.

"If there be any irregularity in the mode of demanding the poll, the taking of the poll would be a complete waiver of such irregularity." *Per Tindal, C. J., Campbell v. Maund*, 5 Ad. & Ell. 88.

If no more candidates are nominated than are necessary to fill the vacant seats, the returning officer ought at once to declare those who have been so nominated to be duly elected. He ought not to wait to see whether others may come forward afterwards ; were he to do so he would be severely censured, and probably punished by the House of Commons (a). If, under such circumstances, candidates were brought forward, and a poll taken, it seems very doubtful whether the election would be avoided on account of such misconduct on the part of the returning officer.

So soon as a poll is demanded it must be granted, the returning officer has no discretion in the matter. Were he to refuse a poll, and return any one of the candidates the election would be void ; and the returning officer would render himself liable to indictment, as well as to the punishment to be inflicted by the House of Commons (b).

(a) *Nottingham*, 1 Peck. 77.

(b) *Southwark*, Glan. 7, and see 4 Inst. 48.

It remains only further to be observed, that the sheriff or other returning officer is now armed with ample powers to prevent any evil consequences arising from riots and violence at the nomination. He may, when necessary, at once suspend the proceedings, and adjourn the business of the election until another day. The same powers exist in England, Scotland and Ireland. 2 Wm. 4, c. 45; 5 & 6 Wm. 4, c. 36; 5 & 6 Vict. c. 78, and 13 & 14 Vict. c. 68. The next thing to be considered is when, and how, the poll is to be taken. The days and hours of polling are fixed by statute.

In English Counties.] The polling commences on the day appointed by 2 Wm. 4, c. 45, s. 62, viz. : the next day but two after the day fixed for the election, unless such next day shall be Sunday, and in that case on the Monday following. By that act the polling was to last *two* days; but by the 16 Vict. c. 15, the time is now limited to *one* day, and the prohibition in the Reform Act of commencing a poll on a *Saturday* is repealed. The poll therefore lasts but one day only; it begins at *eight* in the morning, and can only be *kept open* until *five* in the afternoon.

In English Boroughs.] The time of polling is fixed by the 5 & 6 Wm. 4, c. 36, s. 2, which provides that at every contested election for any city, borough, or town, or county of a city, or county of a town, the polling is to commence at *eight* o'clock in the forenoon of the *next day following* the day fixed for the election, to last *one* day only, and no poll is to be kept open later than *four* in the afternoon.

In Scotch Counties.] When a poll is demanded, the proceedings are to be adjourned for a period to be

named by the sheriff, not exceeding *two* free days exclusive of Saturday and Sunday, 2 & 3 Wm. 4, c. 65, s. 29. The 32nd section of this act required the poll to be kept open *two* days, and prohibited it from commencing on a *Saturday*; but by the recent statute 16 Vict. c. 28, s. 9, it is enacted, that no poll for any election for any county in Scotland (with the exception of the county of Orkney and Shetland) shall be kept open for more than *one* day, and that only between the hours of *eight* in the morning and *four* in the afternoon.

In Scotch Burghs and Districts of Burghs.] The polling lasts *one* day only; and that between the hours of *eight* in the morning, and *four* in the afternoon. The day of the polling is fixed by the sheriff; but not more than *three free* days, exclusive of Saturdays and Sundays, are to elapse between the day of election and the day of polling. In the district of burghs, including Kirkwall in Orkney, known commonly as the week district of burghs, *seven* free days may intervene between the day of election and the day of polling.

In Irish Counties (a).] The polling is to commence on the *next day but two* after the day fixed for the election, except when such day would be a Saturday, Sunday, Good Friday, or Christmas Day. Then in case it be Saturday or Sunday, the poll is to commence on the Monday following; if Good Friday, on the Monday; if Christmas Day, then on the next day, unless that should be a Saturday or Sunday, in which case the poll is to commence on the Monday.

The poll is to continue for *two* days, such days to

(a) 13 & 14 Vict. c. 68, s. 1.

be successive days; except when the second day happens to be Good Friday or Christmas Day, in which case the poll is to be proceeded with on the following day, but if Christmas Day should fall on a Saturday, then the second day of polling must be on the Monday following.

The poll is to open at *nine* in the morning on the *first* day, and at *eight* on the second, and it is to be kept open each day until *four* o'clock. No poll shall be kept open later than *four* o'clock in the afternoon of the second day.

Irish Boroughs.] At every contested election for any city, town, or borough in Ireland the polling is to commence at eight in the morning, of the day next but one after the day fixed for the election. The polling continues during that one day only; and no poll is to be kept open longer than *five* in the afternoon. Provision is made for the day next but one after the day of election being Sunday, Good Friday or Christmas Day, 13 & 14 Vict. c. 68, s. 15.

It will be seen, therefore, that all elections in the United Kingdom now last one day only, with the exception of those in Irish counties, and in the county of Orkney and Shetland in Scotland, which latter is excepted in the Scotch Act on account of the remote situation of some parts of it.

At the hour fixed the polling commences. As no voter can vote at any booth but that to which he is allotted, the notice of what parishes are to vote at each booth should be placed in legible letters in a conspicuous part of the booth. And when different compartments are allotted to different letters, the notice should be distinctly given, 2 Wm. 4, c. 45,

ss. 44, 68, as to England; 13 & 14 Vict. c. 68, ss. 3, 10, as to Ireland. No similar provision is contained in the Scotch acts; see however 2 & 3 Wm. 4, c. 65, s. 27, and 16 Vict. c. 28.

Inspectors or cheque-clerks are allowed to each candidate for the purpose of checking the poll, 7 & 8 Wm. 3, c. 25, s. 3, as to counties, and 2 Wm. 4, c. 45, ss. 64 and 68.

Every preparation being thus made to enable the voter to give his vote at the election, a few remarks may well be made on the nature of the duties of the returning officer during the time of polling. Previously to the passing of the Reform Bill he had very arduous judicial duties to discharge. He had often to decide upon the qualification of the elector. The great change that took place in the system of representation in Great Britain and Ireland in 1832, has completely altered the character of the office.

Now, the returning officer has the register before him, and every man upon that register is entitled to record his vote. The returning officer has not, in this, the least discretion. If the voter on the register, declares that he has not already voted at the election his vote must be taken.

Subsequently to the Reform Bill, and until the passing of the 6 Vict. c. 18, in addition to the inquiries as to bribery, and the identity of the voter, the returning officer might have been called upon to inquire whether the voter still retained the same qualification for which his name was inserted in the register. But the 6 Vict. c. 18, s. 81, provided that at all future elections in England and Wales, no inquiry should be permitted at the time of polling as to the right of a person to vote, except as follows.

The voter may be asked,

1. Are you the same person whose name appears as A. B. on the register of voters now in force for the [as the case may be] ?
2. Have you already voted, either here or elsewhere at this election for the county [or, &c., as the case may be] ?

This question may be put to any voter by the returning officer or his deputy at the request of the candidate, at the time the voter tenders his vote, that is to say before he has voted, and not afterwards.

If the voter wilfully makes a false answer to either of these questions he shall be deemed guilty of a misdemeanor (a).

If the candidate or his agents should require it, an oath may be administered to the voter by the returning officer or his deputy ; or a commissioner appointed for that purpose. The oath is given in the same section of the act, and is as follows :—

“ You do swear (or affirm, *as the case may be*) that you are the same person whose name appears as A. B. on the register of voters now in force for the county of, &c. (*as the case may be*), and that you have not voted, either here or elsewhere at the present election for the county of, &c. (*as the case may be*).”

(a) On an indictment under the Reform Act, against a voter, for giving a false answer to the third question, by stating that he had the same qualification for which he was registered, it was laid down by Patteson J. that, “ If the third question was put at the poll in the presence of the returning officer, by another person, but by his direction, that is sufficient. It is not needful that he should put it with his own lips, neither need it be proved that the agent, who required the question to be put, was expressly appointed by the candidate. It is sufficient if he acted as agent for the candidate.” *Reg. v. Spalding*, 1 Car. & Mar. 568.

The 82nd section goes on to enact, that it shall not be lawful to require any voter at any election to take any other oath, either in proof of his freehold or of his residence, age, or other qualification or right to vote.

The law with regard to the inquiries that can be made at an election in *Ireland* is the same now as it is in England. By the 13 & 14 Vict. c. 68, ss. 88, 89, the only inquiries that can be made at an election in Ireland are—1st, as to the identity of the voter, and, 2ndly, whether he has already voted. No inquiry can take place as to his qualification.

The law is different in *Scotland* (a). No change has taken place there in this respect since the passing of the Reform Bill. By the 2 & 3 Wm. 4, c. 65, s. 26, in addition to the inquiries as to the identity of the voter, and whether he had already voted, it is competent to inquire whether he is still possessed of the qualification recorded in the register, and this may be done by putting the following oath:—

“I, A. B., solemnly swear (or affirm) that I am the individual described in the register for _____, as A. B., of (*here insert description in the same words as contained in the register*); that I am still the proprietor (or occupier) of the property for which I am so registered, and hold the same for my own benefit, and not in trust for or at the pleasure of any other person; and that I have not already voted at this election.”

When the voter is asked, are you the person whose name appears on the register? the inquiry is as to the identity of the person tendering his vote, with the person described on the register, and not whether the voter's name agrees with the description in the re-

(a) The oath of possession is abolished at *burgh* elections; 19 & 20 Vict. c. 58, s. 44.

gister, if the voter were wrongly named in the register, as *Joseph Brown* for *John Brown*, the voter ought to answer the question and say, "I am the person so described."

Bribery oath.] No oath against bribery is now required to be taken by any voter at any election in the United Kingdom. This change was introduced by the "Corrupt Practices Prevention Act, 1854."

Among other statutes and parts of statutes which are repealed by the recent act, are those which imposed upon a voter the necessity of taking the oath against bribery, when so required. The 2 Geo. 2, c. 24, commonly known as the Bribery Act, is repealed, with the exception of those provisions which require the returning officer to take the oath already mentioned. This was the act which imposed the bribery oath in England.

The 33rd section of the 16 Geo. 2, c. 11, extended the operation of the Bribery Act to Scotland. That 33rd section is now repealed. The 26th section of the Scotch Reform Act also gave a form of oath against bribery, which was to be put by the sheriff when required. This also has been abolished.

The oath in Ireland is also done away with by the repeal of the 48th section of 4 Geo. 4, c. 55, and of so much of the 54th section of 2 & 3 Wm. 4, c. 88, as relates to the administering the oath or affirmation against bribery.

No inquiry, therefore, can now take place at the time of the election as to whether the voter has received any corrupt inducement to give his vote, either in England, Scotland, or Ireland.

The only oath that can now be put to an elector in England and Ireland, is that with regard to his

identity, and his not having already voted. In Scotland, the oath comprises the further declaration that the qualification remains unchanged. If a person, who is not the elector, comes to the poll and says that he is, or swears that he is when so required, the returning officer has no discretion, he must accept the vote. If a voter were to say that he had not voted already, when in truth he had voted, as the returning officer might see on turning back to the page where his vote was recorded whether he had voted, it would be the duty of the officer to refuse the vote when tendered a second time. If the voter declared that he had not himself voted in his own name, the officer ought to receive the vote as one *tendered*, in the way which will be described in cases of *personation*.

Personation.] The returning officer is bound to receive the vote tendered by a man personating another, even when the facts of such personation are known to him. The law, however, has provided a summary mode of proceeding with persons guilty of such flagrant offences. If the person tendering the vote is objected to at the time, and is charged with the personation, the vote should be entered in the poll book as one "protested against for personation" (a).

Agents may now be appointed by candidates for the express purpose of detecting personation; every such agent must give his name and address to the returning officer or his deputy, and he will then be allowed to attend in the booth.

(a) 6 Vict. c. 18, s. 86, and 13 & 14 Vict. c. 69, s. 93. The enactments in this Irish Act are identical with those in the English Act.

Whenever such agent is firmly persuaded of the fact of the personation, he may declare to the officer at the poll, either before or after the man has voted, but before he shall have left the booth, that he verily believes, and undertakes to prove, that the person voting is not, in fact, the person in whose name he assumes to vote.

Upon such a representation being made to him, the returning officer or his deputy must forthwith order, by word of mouth, any constable or other peace officer to take the person who has so *voted* into custody. The act gives no power to deal with the man summarily unless he has actually voted. If a person were to come into the booth and answer the question as to his identity falsely, or take a false oath to that effect, unless he also recorded his vote, he could not be thus apprehended. Not that he would escape punishment for so gross an offence; for the giving a false answer to the question is in itself a misdemeanor (sec. 81), and the taking a false oath would of course subject the offender to the penalties of perjury.

When the person charged with personation has been taken into custody, he must be brought at the earliest convenient time, before two justices of the peace for the county, city, or borough within which such person shall have voted; but if the attendance of two justices cannot be obtained within *three* hours after the close of the poll, on the day on which the voter is taken into custody, he may at his own request be taken before *one* justice, who may liberate him on his entering into a recognizance with one surety, to appear before *two* justices, to answer the charge, at a time

and place to be specified (a). If one justice cannot be found within *four* hours after the closing of the poll, the man must be discharged out of custody; but a warrant may be issued afterwards for his apprehension.

If on the hearing of the charge, supported by the evidence of not less than two witnesses, the justices are satisfied of the truth of the charge, they must commit the offender for trial in the usual way, and bind over the witnesses to appear and give evidence (b).

Should the justices consider the charge to be unfounded, and made without reasonable or just cause, or, if the agent originating the charge should not appear to support it, then, the justices must make an order for such agent to pay the party accused a sum not exceeding 10*l.*, nor less than 5*l.*, by way of damages and costs. If the party aggrieved consents to accept this compensation, and all the money ordered to be paid shall be paid or tendered to him, no other action or proceeding, civil or criminal, can be taken in respect of the charge and apprehension. If the money ordered to be paid, is not paid within twenty-four hours after the order, the goods and chattels of the agent may be distrained, and sold to levy the amount; if no sufficient goods of the agent can be found, the goods of the candidate appointing the agent may be distrained; and if the sum is not paid, or levied, the party aggrieved may bring an action in

(a) 6 Vict. c. 18, s. 87; 13 & 14 Vict. c. 69, s. 94.

(b) Sec. 88.

any of the Superior Courts of *Westminster* or *Dublin* (as the case may be) to recover the amount (a).

In both the *English* and *Irish* acts, the personating a voter, and falsely assuming to vote in the name of a person on the register, whether such person shall be living or dead, is a misdemeanor, punishable with two years' imprisonment and hard labour.

It will be obvious that the agent making the charge of personation, exposes himself and the candidate by whom he was appointed, to serious responsibility. As the returning officer can exercise no discretion in the matter, when once the charge has been formally made, it behoves the agent not to act precipitately, but to be well assured of the fact before he makes the charge. The object of the Legislature, in giving this summary manner of proceeding, is to prevent the recurrence at the election of so mischievous an offence. Any man who has committed personation at an election, if not apprehended at the time, may of course be taken up on a magistrate's warrant, and be committed for trial as in the case of any other misdemeanor.

If the voter who has been personated should afterwards come to the poll and tender his vote, the returning officer cannot receive the vote as one to be reckoned in the poll; but he must enter the vote as one *tendered* for the candidate in whose favor the voter intended to vote. The 6 Vict. c. 18, s. 91, provides for this case at English elections, and the 13 & 14 Vict. c. 69, s. 98, as to Irish. The returning officer must take care not to reckon such votes when he afterwards casts up the

(a) 6 Vict. c. 18, s. 88; 13 & 14 Vict. c. 69, s. 96.

poll. Although there are no similar provisions with regard to personation in the acts relating to *Scottish* elections, there can be no doubt that a sheriff or his substitutes would act rightly in so entering a *tendered* vote at the bottom of the poll. In the case of a scrutiny taking place afterwards before an election committee, it would facilitate the proof of such vote having been tendered. In England or Ireland the entry would be proof of the tender, as it would have been made in obedience to the statute. In Scotland such entry would be in the nature of hearsay evidence, but it would enable the party making it to refresh his memory by the entry.

Mistakes in recording the vote.] It happens sometimes in the hurry of an election, when a great number of voters are waiting at the booths to record their votes, that mistakes are made in entering the vote on the poll book ; and the voter who intended to vote for one candidate has his vote recorded in favor of another. It is important therefore to see how far the returning officer is justified in correcting the poll book, when a mistake of this kind occurs. The rule seems to be this, that a voter who in the confusion of the moment, has named a wrong candidate, may correct himself and name another, if his vote has not already been recorded. If the poll clerk has once entered the vote as being given for a particular candidate, it is then too late for the voter to say that he had intended to vote for some one else. Should the mistake, however, be clearly that of the poll clerk, and be at once pointed out, it is the duty of the officer presiding at the poll booth to correct the poll according to the truth. There can seldom be

any difficulty in ascertaining whether the poll clerk has committed a mistake or not. The books of the check clerks, who also hear the voter name the candidate he wishes to support, will afford evidence to the officer upon which he can safely act. If they have entered the vote in the same way as the poll clerk, the returning officer ought not to allow any alteration to be made. In fact it is only when the evidence is clear that he would be justified in making the correction. If the error were not pointed out immediately, and there was any discrepancy between the books of the check clerks as to the candidate named by the voter, the returning officer ought not to allow the alteration to be made. He has no power to enter into a scrutiny (a); he is positively forbidden to do so, and he probably ought not to receive any evidence but what appears on the poll books and check books before him.

If the returning officer were to refuse to correct the mistake of the poll clerk, the error would be rectified on a scrutiny before a committee of the House of Commons. It would, however, be very hard upon a candidate, where an election depended upon a majority of one or two votes, that all the expense and annoyance of a petition should be gone through, where the returning officer has the power of correcting the mistake at the time. Although the decisions by committees have not been uniform on this subject, it is believed that the rule here laid down is now considered to be the correct one (b).

(a) 16 Vict. c. 18, s. 82; 13 & 14 Vict. c. 69, s. 89.

(b) Rogers on Elect. 233, and see cases collected in Clerk on Com. 196.

Tenders of votes rejected by the revising barrister.]

Persons may sometimes present themselves at the poll, whose names have been omitted or expunged from the register, by the express decision of the revising barrister. The returning officer has no power to inquire whether the names have been so omitted or expunged, nor can he make any inquiry into the title of such persons to vote. He should, however, receive the votes as tenders (a), but distinguish them from the votes admitted and allowed, and he must take care not to count such tenders in reckoning up the poll. The object in entering the vote as a tender is to facilitate the proof on a scrutiny, if it should afterwards become necessary to show that the vote was tendered at the election. If the poll book, however, had no entry of the fact, it would not preclude the claimant from showing by other evidence that he did tender his vote at the election (b).

Were a voter to be brought to the poll in such a state of intoxication that he seemed unconscious of what he was doing, the returning officer would act rightly in refusing to allow him to vote. He might direct the friends of the voter to take him away that he might recover his reason, so as to be able to vote at a later hour of the day. Such are all the duties of the returning officer so far as the recording of the vote is concerned. They are all of a simply ministerial character, and, with the register in his hand, the returning officer can hardly fall into any error.

Poll interrupted by riot.] What is the duty of the returning officer in case the taking of the poll is

(a) 2 Wm. 4, c. 45, s. 59, and 13 & 14 Vict. c. 69, s. 86.

(b) Clerk on Elect. Com. 263.

interrupted by riot? The act of Parliament tells him what he is to do. 5 & 6 Wm. 4, c. 86, s. 8, as to *English* elections.

“Where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whether such proceedings shall consist of the nomination of candidates or of the taking the poll, the sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause terminate the business of such nomination, nor finally close the poll, but shall adjourn the nomination, or the taking the poll at the particular polling place or places at which such interruption or obstruction shall have happened, until the following day, and, if necessary, shall further adjourn such nomination or poll, as the case may be, until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed with the business of the nomination or with the taking the poll, as the case may be, at the place or places at which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the poll shall be regulated accordingly; and any day whereon the poll shall have been so adjourned shall not as to such place or places be reckoned the day of polling at such election, within the meaning of this act; and whenever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation

of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and the poll books delivered or transmitted to such sheriff or other returning officer, anything hereinbefore or in any other statute to the contrary notwithstanding : provided always, that this act shall not be taken to authorize an adjournment to a Sunday ; but that in every case in which the day to which the adjournment would otherwise be made shall happen on a Sunday, Good Friday, or Christmas Day, that day or days shall be passed over, and the following shall be the day to which the adjournment shall be made."

The sheriff and his substitutes have the same power at Scotch elections. The 5 & 6 Wm. 4, c. 78, s. 5, is similar to the section quoted above.

The 13 & 14 Vict. c. 68, s. 18, gives a similar power to adjourn the proceedings at *Irish* elections. The clause, however, enables the returning officer to adjourn, not only when a riot takes place near a polling place, but also when the proceedings are interrupted or obstructed, by any riot or open violence taking place *elsewhere*, by the violent or forcible prevention, obstruction, or interruption of voters proceeding on their way to such election or polling place ; but such prevention, obstruction, or interruption of voters must be shown by *affidavit* to the returning officer.

The powers thus conferred upon the returning officer must be exercised with calmness and deliberation. It is not on every disturbance or rioting, occurring in the neighbourhood of the polling place, that he will be justified in adjourning the poll ; and thus causing the election to continue for another day. He must consider, is this a mere drunken brawl, or

casual disturbance, which may easily be quelled by the interference of the police and special constables? or, is it an organised attempt to hinder the progress of the election, and one which is likely to continue? The course that the returning officer ought to take must depend upon the answer that he can give to such questions as these, upon examining the circumstances with as much equanimity as the excitement of the moment will allow. If he should refuse to adjourn the poll when there is a general and open riot, of such a nature as to prevent the business of the election from proceeding, he will render himself liable to be severely handled by the House of Commons, and the whole proceedings of the election may become null (a). If, on the other hand, he should hastily adjourn the poll on insufficient grounds, he will put the parties to very serious expense, and possibly aggravate the disturbance and bad feeling that he was anxious to avoid. At *Irish* elections especially, where the returning officer may be called upon to act upon the information and fears of others, an additional degree of caution is required. The unnecessary adjournment of the proceedings, though it might in some cases expose the returning officer to the censure of the House, would not affect the validity of the election (b). Whenever the poll is adjourned by a deputy, he is required forthwith to give notice of such adjournment to the sheriff or other returning officer. When the poll has once been adjourned, it cannot be resumed again on that day.

(a) Cases collected in Clerk on Elect. Com. 87.

(b) *Roxburgh*, E. & F.

Premature closing of the Poll.] It has been already pointed out that certain periods are prescribed in the statutes, during which the polling is to continue. The 16 Vict. c. 15, enacts, "that at English county elections, the poll shall commence at eight in the morning, and *be kept open until five* in the afternoon." The language of 5 & 6 Wm. 4, c. 36, is different: it says the polling in the English boroughs shall commence at eight, and no poll shall be kept open *later than* four in the afternoon.

The 16 Vict. c. 28, s. 9, provides with regard to Scotch county elections, that no poll at any election for any county shall be kept open for more than one day, and *that only between* the hours of eight in the morning and four in the afternoon. The provision with regard to Scotch burgh elections is the same; 5 & 6 Wm. 4, c. 78, s. 5.

At Irish county elections the poll is to be kept open *only* between the hours of nine in the morning and four in the afternoon of the first day, and between the hours of eight in the morning and four in the afternoon of the second day, and no poll shall be kept open *later than* four in the afternoon of the second day; 13 & 14 Vict. c. 68, s. 1. At Irish borough elections, the polling is to continue one day, and no poll is to be kept open *later than* five in the afternoon.

Such are the statutory provisions as to the duration of the poll; and it is important to consider whether a returning officer might be justified under certain circumstances in closing the poll before the extreme limit had arrived. It will be observed that the Legislature has never used *negative* language on this subject; it has nowhere said, that the poll shall not be closed

sooner than four or five, as the case may be. It is said positively that no poll shall be kept open *after* a certain hour, but there is nowhere to be found, even in affirmative language, that the poll shall continue open *until* that hour. There can be no doubt that it is the duty of the returning officer not to do any act which may prevent a constituency from fully enjoying their franchise at an election. May he not, however, in certain cases, close the poll before the usual hour?

The 2 Wm. 4, c. 45, s. 70, distinctly recognises such a power: "Nothing in this act contained shall prevent any sheriff or other returning officer, or the lawful deputy of any returning officer, from closing the poll previous to the expiration of the time fixed by this act, in any case where the same might have been lawfully closed before the passing of this act." The 18 & 14 Vict. c. 68, s. 18, contains the same proviso as to the duration of elections in *Ireland*. The 2 & 8 Wm. 4, c. 86, s. 32, provides that the poll may be closed at any place in *Scotland* before the termination of the time pointed out by the act, if all the candidates or their agents, and the sheriff shall agree in so closing it.

The question therefore arises, under what circumstances can the returning officer close the poll before the expiration of the appointed time? There can be no question that he can lawfully do so with the consent of ~~all the candidates~~ or their authorized agents. Again, if all the constituency were polled out, the poll might lawfully be closed. This, however, is not likely ever to occur in practice at the present day. Were one candidate at an election to have an overwhelming majority, and only a few electors remained unpolled, so few that they could not possibly affect the result of

the election, and symptoms of serious riot and other violence began to show themselves, would the returning officer be justified in closing the poll, or must he, in the event of the riot breaking out before four o'clock, adjourn the proceedings and keep the poll open for another entire day? If an election had been so terminated before the passing of the Reform Act, upon notice being given, there seems to be no doubt that the election would have been considered valid, and there is no reason to suppose that the returning officer would have been censured (a). And it may well be doubted, whether an election would now be upset, when the poll was prematurely closed, if it appeared clearly that the result of the election was not in the least affected by it. This is a point which has been discussed on several occasions, since the passing of the Reform Act, before election committees. In the *Limerick case*, P. & K. 355, the committee determined that the proceedings of the sheriff in opening and closing the poll, at hours other than those prescribed by statute, were highly improper; but the committee have reason to believe that their conduct did not arise from any corrupt motive, and, further, that the result of the election was not affected by such proceedings, and they upheld the election.

(a) Before the 25 Geo. 3, c. 84, elections lasted sometimes as much as thirty-one days. By this statute they were limited to fifteen; not that the returning officer was obliged to keep the poll open all that time—he could exercise a discretion against the wish of one side. *Rochester*, 2 Roe, 452; Orme on Elections, 41. *Bristol case*, Cor. & Dan. 73. This last case was very fully argued, and is quite at variance with the recent case of *Harwich*, 1851. See also *Colchester*, 1 Peck. 507; 2 Peck. 271, 430; *post*, 367.

In the *Roxburgh case*, F. & F. 503, it was moved in committee, that the election was null and void by reason of the adjournment and premature final close of the poll at Hawick, whereby the electors of that district were deprived of a portion of the period allowed by law for the exercise of their franchise, but it was negatived by six to three.

A case, that has created a good deal of comment, occurred in 1851, 2nd *Harwich*, P. R. & D. 314. The petition alleged that, the poll had been prematurely and unlawfully closed before the expiration of the time fixed by law, without any sufficient cause for, or notice of such closing; that a large number of voters remained unpolled, that several persons who would have voted for the unsuccessful candidate, were prevented from voting by the closing of the poll. The petition also complained that the proceedings were interrupted by riot, and that the poll ought to have been adjourned.

The majority of the sitting member was six; the numbers being 133 and 127, for the respective candidates. It was proved that the poll had been closed a very short time before four o'clock. Some of the witnesses said half a minute, others as much as three or four minutes before four (a). A voter was at the hustings at the time tendering his vote for the unsuccessful candidate, when a number of fishermen got upon the hustings and commenced pulling them down. The mayor and the poll clerks left the booth in consequence with the books, and the vote was not taken. The committee held the election to be void; it is dif-

(a) Print. Min. 2nd *Harwich*, 1851.

difficult to say on what ground. Their report is as follows:—1st. "That in the opinion of the committee, the evidence adduced shows that at the last election, the poll was closed before four o'clock." 2. "That the evidence shows the proceedings at the said election to have been interrupted, and obstructed by open violence." 3. "That in consequence of such interruption and obstruction by open violence, *J. Woods*, who tendered his vote, was prevented recording the same." 4. "That the last election was a void election." 5. "That the returning officer should not finally have closed the poll." Whether the election was void because the poll was closed one or two minutes before four, or because the disturbance at the booth prevented the mayor from recording the vote of one man, it is difficult to say. The committee report, that the mayor ought to have adjourned the poll, and consequently to have continued the poll during the whole of another day.

It may well be doubted whether the disturbance that took place, was of such a nature as to have justified the mayor in adjourning the poll. A few fishermen, believing four o'clock had arrived, got upon the hustings and commenced pulling down the boards. Though the mayor was thereby forced to leave the hustings, he might have recorded the vote in the street. It was not attempted to be proved that any other voters but this one man were waiting to tender their votes. Had that been the case, considering how small was the majority, the decision would have been more satisfactory than it is.

When once a poll has been closed it cannot be re-opened. *Arundel*, Glanv. 71.

Election prolonged beyond legal time.] If the election were prolonged beyond the hour named in the several statutes, the election probably would not be void on that account, if it could be shown what was the state of the poll at four o'clock. If at that time one of the candidates was clearly in a majority, the seat ought, it is apprehended, to be given to him, and all that took place after the legal hour should be considered as forming no part of the election (a).

3. *The Declaration and Return.*] When the hour for closing the poll has arrived, the poll clerks at the several places of election, in *English* counties, must enclose and seal their several books, and deliver them publicly so enclosed and sealed, to the sheriff, under sheriff or sheriff's deputy presiding at the poll. Every deputy who receives a book must forthwith transmit or deliver it so enclosed and sealed to the sheriff or under sheriff. The sheriff or under sheriff must keep all the poll books *unopened* until the re-assembling of the court on *the day next but one* after the close of the poll. And he must then *openly* break the seals, cast up the number of votes as they appear on the several books, and openly declare the state of the poll, and make proclamation of the members chosen, not later than *two* in the afternoon of such day (b).

In *English Boroughs*, the poll clerks deliver their books in like manner enclosed and sealed to the returning officer, or to the deputies, who forthwith transmit or deliver them to the returning officer; who may if he think fit, declare the final state of the poll and make the return, immediately after the close of the

(a) *Arundel case*, Glanv. 71.

(b) 16 Vict. c. 15.

poll. He may, however, wait till the next day, and then declare the numbers polled and make the return (a).

At *Scotch* elections the poll books are delivered by the sheriff officiating at each polling place, to the sheriff who has to make the return. In Scotland the acting substitute superintends the poll, and signs each page of the poll book before any entries are made in the next page (b).

The declaration of the poll and the return, are made in Scotch counties on the next day but one after the close of the poll (c). By a recent enactment it is provided, that when the sheriff shall not have received the poll books transmitted from any *island* within the time above mentioned, he may adjourn the court from day to day, and may make the return either at the first adjourned court after he has received the books, or at the expiration of *twelve* days from the first adjourned court, whichever day shall first happen (d).

At *Scotch burgh* elections, the sheriff may, without waiting for the day fixed for the declaration in counties, make the return upon the receipt of the poll books. He is not however to do so later than *two* in the afternoon. He can never therefore make the return on the polling day, except when the poll has been closed at an early hour by consent of all parties; but the return may be made on the next day (e). When an election takes place for a district

(a) 2 Wm. 4, c. 45, s. 68.

(b) 2 & 3 Wm. 4, c. 65, s. 32.

(c) 2 Wm. 4, c. 65, s. 33.

(d) 16 Vict. c. 28, s. 8.

(e) 5 & 6 Wm. 4, c. 78, ss. 5 and 6.

of burghs situated in different counties, the poll books are to be transmitted by the sheriffs at the several polling places, to the sheriff appointed by the Scotch reform act to make the return for the district (a).

Irish County Elections.] Here the polling still continues for two days. The poll clerks at the close of each day's poll, enclose and seal their several books and deliver them publicly to the sheriff or his deputy, who gives a receipt for the books. On the second morning the deputy delivers the books back, so enclosed and sealed, to the person from whom he received them. At the final close of the poll, the books are forthwith delivered by the deputies to the sheriff or under sheriff, who keeps them as in England, and breaks the seals not earlier than *eleven* on the day next but one after the close of the poll, and declares the result at or before *two* on such day (b).

At *Irish burgh* elections, the deputy receiving the poll books, at the close of the poll, gives the poll clerk a receipt for them. The books are delivered enclosed and sealed to the returning officer, who keeps them unopened until the day next after the close of the poll, and then breaks the seals, not earlier than *ten* in the morning, and declares the result at or before *three* in the afternoon of the same day (c).

No statutory provision has been made for the safe custody of the poll books during an adjournment rendered necessary by riot. There can be no doubt, however, that the proper course would be, for the poll

(a) 5 & 6 Wm. 4, c. 78, ss. 5 and 6.

(b) 13 & 14 Vict. c. 68, s. 4.

(c) Sect. 16

clerks to deliver their respective books sealed to the deputies, who ought to give a receipt for them, and return them on the next morning to the persons from whom they received them.

Double Return.] When, upon casting up the poll, it appears that there is an equal number of voices for two candidates, the returning officer, in England and in Scotland, ought to return them both by separate indentures (a).

The sheriff, in Scotland, is ordered to make a double return when the votes are equal; 2 & 3 Wm. 4, c. 65, s. 33. And in England it has, for a long time, been the practice, whenever the votes were equal for two candidates, to return them both. This course has been recognised by the Legislature as a correct one. The sessional orders of the House of Commons, and the act for the trial of election petitions, 11 & 12 Vict. c. 98, s. 21, make provision for the manner of dealing with such double returns.

In *Ireland*, the returning officer is expressly prohibited from making a double return when there is an equality of voices; 35 Geo. 3, c. 29, s. 13. The sheriff or returning officer *must* give a casting vote when the numbers are equal, whether he is otherwise qualified to vote or not, and whether he shall have already voted or not. Any officer returning more members than are required by the writ or precept, will forfeit 2000*l.* to the person suing for the same, and will be for ever afterwards *incapable of voting* at any election of member of Parliament. When there are more presiding officers than one at

(a) *Knaresborough*, 1852, case of treble return.

an Irish election, the officer whose name stands first in the appointment must give the casting vote.
4 Geo. 4, c. 55, s. 68.

The Return.] The return is made by indenture, and will in future be made in the same manner in boroughs as has been customary in English counties (a). The indenture naming the persons chosen, and signed and sealed, must be tacked to the writ itself, and returned to the Crown Office in Chancery. 16 & 17 Vict. c. 68. The writ now goes directly to the returning officer at all English elections, and no precept is now issued from the sheriff. The former practice still continues in Ireland, where the sheriff of the county returns the writ for the county election with his indenture; and he also tacks the indentures of

(a) At a recent election, *Barnstable*, 1854, the returning officer misapprehended the state of the law, and instead of sending an indenture of return, he in the first instance sent a certificate, signed and sealed by himself as Mayor, declaring, that in obedience to the *precept* which he had received, two members, J. L. and R. S. G., had been elected. This certificate was sent, attached to the writ, to the Crown Office, on the 19th *August*. The mistake was discovered by or made known to the Mayor, and he thereupon, on the 25th *August*, sent an indenture, between himself of the one part, and certain burgesses of the other, whereby, in obedience to a *precept* delivered to him, he returned J. L. and R. S. G. as duly elected. A doubt was expressed in the House, 13th *December*, 1854, whether the return was sufficient to allow the members to be sworn, as so long a time had elapsed between the election and the return. After a short discussion the informality was considered unimportant, and the members were sworn. A good election is always ground for amending an insufficient return. *Glas.* 133. The returning officer speaks of the election being held by virtue of a *precept*,—as has been already pointed out, his authority now is the writ out of Chancery.

returns transmitted to him by the returning officers of the boroughs in his county, to the writ sent to him, and so transmits them to the clerk of the Crown. The names of the candidates, and the number who voted for each candidate as it appeared at the final close of the poll, may be certified by indorsement on the return by the returning officer in Ireland; this certificate will be *prima facie* evidence of the facts so indorsed (a).

In Scotland, the sheriff is directed, after the declaration of the state of the poll, *forthwith* to make a return, in the terms of the writ, under his hand and seal, to the clerk of the Crown in England. 2 & 3 Wm. 4, c. 65, s. 33.

It is provided by 11 & 12 Vict. c. 98, s. 103, that if any sheriff or other returning officer shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned, such person may, in case it have been determined by a select committee that such person was entitled to have been returned, sue the sheriff or other officer, and shall recover double the damages he has sustained by reason thereof, with costs of suit. The 2 Wm. 4, c. 45, s. 76, imposes also a penalty of 500*l.* on any returning officer wilfully disobeying the provisions of the act (b).

If there should be any formal error in a return it

(a) 1 Geo. 4, c. 11, and 4 Geo. 4, c. 55, s. 71. *Londonderry*, P. & K. 272. *Limerick*, P. & K. 373. Since the 13 & 14 Vict. c. 69, s. 91, has made better provision for the custody and proof of poll books at elections in *Ireland*, the certificate on the return is of no practical value.

(b) See also 6 Vict. c. 18, s. 97, and 13 & 14 Vict. c. 69, s. 103.

will be amended in the House. The clerk of the Crown will attend with the return for that purpose, and make the amendment ordered by the House.

The returning officer has no discretion to exercise in making his return, he must return those who have the greatest number of votes. He cannot inquire whether the votes are good or bad, or whether the candidate is disqualified or not. Though he might know that a candidate was a minor, or disqualified from holding an office, or by reason of insufficient estate (*a*), or a report of the committee of the House of Commons declaring him to have been guilty of corrupt practices at a former election, he would be bound to return him, if such candidate were in a majority.

Mr. Rogers, in his work on Elections, p. 39, says, where the disqualification of a candidate rests upon a single fact, within the knowledge of the returning officer, the House has considered such return vexatious; and three cases are cited (*b*). In none of those cases was the conduct of the returning officer said to be vexatious, but the election and return were voted vexatious in order to saddle the sitting member with costs.

Having thus concluded all the business of the election, and dispatched the return to the proper officer, the duties of the returning officer are at an end, with one exception, and that is, the final disposal of the poll books.

Custody of Poll Books.] In consequence of the great difficulties that were experienced on the trial of

(*a*) The proceedings at an election, when the qualification of a candidate is demanded, will be considered, *post*.

(*b*) *Flintshire*, 1 Peck. 526; *Mallow*, P. & K. 266; *Tiverton*, Ib. 269.

controverted elections in the proof of the poll books, some beneficial regulations were introduced by 6 Vict. c. 18, as to the custody of poll books in England after an election. At every contested election in England and Wales, the returning officer, so soon as he has made the proclamation of the members elected, must *forthwith* enclose and seal up the several poll books, and tender the same to each of the candidates (a) to be sealed by them respectively; if the candidates neglect or refuse to seal the same, the returning officer is to indorse upon one of the poll books such fact, and he is directed to deliver the poll books so sealed, as soon as possible after the proclamation, to the clerk of the Crown in Chancery; or, he must deliver the books, directed to the clerk of the Crown, to the postmaster of the place, who is to give a receipt to the returning officer expressing the time of delivery. The postmaster dispatches the books by the first mail to the General Post Office, from whence they are at once conveyed to the Crown Office; the clerk of the Crown gives a receipt for the books, stating the time of delivery, and then registers the receipt of the books in his office, and indorses on the poll books the time when he received them. The returning officer, at the same time that he transmits the poll books by the post, must send by the same mail a letter to the clerk of the Crown informing him of the transmission, and

(a) The returning officer is bound to follow these directions literally; an omission, however, to seal the poll books or tender them to be sealed by the candidates would not prevent the reception of the books or their production by the clerk of the Crown. See cases in Clerk on Elect. Com. 255, and *Mayo and Waterford cases*, 1853, Print. Mins.

giving the number and description of the books. 6 Vict. c. 18, s. 93.

The books are kept by the clerk of the Crown, who gives office copies of them when required; sect. 94. And the production of the books, *so deposited* with him, shall be sufficient *prima facie* proof of the authenticity of the poll books; sect. 96.

These provisions for the safe custody and easy proof of poll books were applied to the proceedings at *Irish* elections by 13 & 14 Vict. c. 69, ss. 99, 101, 102, the only difference being that the books are sent to the clerk of the Crown and hanaper in Dublin, instead of being sent to the Crown Office in London; and the poll books when wanted for evidence before a committee, must be produced by such clerk of the Crown and hanaper.

It is much to be regretted, that there is no similar enactment for the safe custody of poll books in *Scotland*. The poll books, after the declaration of the poll at Scotch elections, remain in the hands of the sheriff who has made the return, he is responsible for their safe custody, and they ought to be kept by him, or in his office by the sheriff clerk. The sheriff or the sheriff clerk is the proper officer to produce them when they are wanted by an election committee.

In the *Invernesshire case*, K. & O. 300, the committee, in receiving the books in evidence, expressed their opinion that the poll books had been kept in a very careless way.

In a recent case, *Wigton Burghs*, 1853 (a), certain books were produced and received as the poll books,

(a) Printed Minutes of Proceedings.

but there was no evidence whatever of their authenticity. They were produced by the town clerk of Wigton, who had no more right to be in the possession of the poll books than any other town clerk. The poll books are directed to be transmitted to the sheriff of the county of Wigton (*a*), who is the officer who makes the return for the district. No evidence was given to explain how the poll books passed out of his custody. The objection was not taken, and the books produced by the town clerk were received as the poll books.

There are one or two matters connected with the practice of elections, which may be conveniently noticed here, though it does not form any part of the duty of the returning officer to attend to them.

The proceedings of an election will probably hereafter be of a graver character than they have hitherto been. Bands of music, flags and banners, will, in all probability, be banished from the scene. The use of these is not declared illegal; but as any payment on account of them by the candidate, or his authorized agents for election expenses would be *illegal* payments, it is probable that they will seldom be met with in future. The distribution of cockades, ribbons, and other marks of distinction by a candidate or his agents is also declared to be illegal, and the commission of such an illegal act would subject the candidate to a pecuniary penalty. So also would any payments for the band, &c. before mentioned. These matters will be noticed hereafter in treating of illegal payments.

(a) *Schedule L. 2 & 3 Wm. 4, c. 65.*

With the view of securing freedom of elections, many resolutions have from time to time been passed by the House of Commons against the interference of persons in power in the proceedings of elections.

Ministers of the Crown.] Dec. 1779. Journ. 507. *Resolved*, "That it is highly criminal in any minister or ministers, or other servants under the Crown of Great Britain, directly or indirectly to use the powers of office in the election of representatives to serve in Parliament; and an attempt at such influence will at all times be resented by this House, as aimed at its own honour, dignity, and independence, as an infringement of the dearest rights of every subject throughout the empire, and tending to sap the basis of this free and happy constitution" (a).

Peers.] 1802. "That it is a high infringement of the liberties and privileges of the Commons of the United Kingdom, for any lord of Parliament, or other peer or prelate, not being a peer of Ireland at the time elected, and not having declined to serve for any county, city, or borough of Great Britain, to concern himself in the election of members to serve for the Commons in Parliament, except only any peer of Ireland, at such election in Great Britain respectively, where such peer shall appear as a candidate, or by himself or any others be proposed to be elected, or for any lord lieutenant or governor of any county, to avail himself of any authority derived from his commission to

(a) In the session of 1853 a lengthened inquiry took place as to some alleged interferences on the part of persons in office under the Crown with the freedom of certain elections. *Chatham*; *Plymouth*.

influence the election of any members to serve for the Commons in Parliament."

Several cases have occurred where election committees have inquired into such matters when alleged in the petitions referred to them. *Worcester*, 3 Doug. 255; *Warwick*, P. & K. 538; *Hertford*, P. & K. 546. In the *Stamford* and *Gloucester* cases, 1848, committees were specially appointed to inquire into and report upon the alleged interference.

Presence of Military.] In the year 1645 the House resolved, "That all elections of any knight, citizen, or burgess to serve in Parliament be made without interruption or molestation by any commander, governor, officer, or soldier." In the year 1741 it was resolved, "That the presence of a regular body of soldiers at an election of members to serve in Parliament is a high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitution of this kingdom."

By a recent statute, passed in the year 1847, provision is made to regulate the stations of soldiers during elections. The 10 Vict. c. 21, repeals the statute 8 Geo. 2, c. 30, which required, that all soldiers quartered or billeted in any place where an election was being held, should be removed to a distance of two or more miles, and enacts, in lieu thereof, that on the nomination and polling days, no soldier within two miles of the place of nomination or polling, or declaration of the poll, is to go out of barracks or quarters, except to 'relieve guard, or give his vote. This does not apply to the Guards attending the Queen, or to the soldiers stationed and employed within the Bank of England.

The clerk of the Crown, as soon as he has made out a writ for an election, must give notice to the Secretary at War, in order that he may give notice to the General commanding in the district to issue orders to enforce this act.

It does not often become necessary to call out the military to quell disturbances at *English* elections. The ordinary civil force is in general sufficient; and the power which the returning officer has of adjourning, from day to day, when the election is impeded by open violence, will probably render the recurrence to military assistance of very rare occurrence.

In *Ireland*, however, an unfortunate habit prevails of calling upon the military to be present at the election, and to take an active part in escorting voters to the very doors of the polling booths. Such a practice is almost certain to increase the disturbance, and to foment the animosity already existing at the election. The soldiers appear necessarily as partizans, taking a part in the election by bringing voters to the poll. Such a practice was resorted to at the *Mayo* and *Clare* elections in 1852 (a). At the latter election, the consequences were most lamentable; many lives were lost by reason of this very injudicious employment of the military. Now that any undue influence exercised upon a voter, to prevent his voting, will avoid an election if done by a candidate or his agents, there will be the less excuse for calling upon soldiers to accompany voters to the poll. It has usually been on the plea that a strong popular feeling existed against one party at an election, and that the voters

(a) Printed Minutes.

for that party were afraid to go to the poll without protection, that the military have been called upon to protect them. It is to be hoped that the sad spectacle at the last *Clare* election will stop this practice for the future.

CHAPTER II.

ELECTION AUDITOR.

NOTWITHSTANDING the efforts made by the Legislature to extinguish bribery and other corrupt practices at elections, it was confessed with regret, in the sessions of 1853 and 1854, that to a great extent those efforts had proved ineffectual. It was even publicly asserted, that there had been more lavish expenditure, and a greater amount of corruption at the general election in 1852, than had occurred at elections for some time previously. This was probably an exaggeration; a great deal of bribery no doubt took place, but the minutes of the evidence taken before the election committees will show, that the amounts paid were usually small, and the general expenditure was certainly not on that lavish scale which is to be met with in the older reports. A greater proportion than usual of the elections petitioned against were avoided in committee, but then it must be remembered that bribery is far more easily proved now than it used to be; and the reduction of the numbers of the committee by increasing the responsibility of each member, has tended to prevent them from dealing in a lenient but lax way with mal-

practices proved before them. The evil of corruption, however, still existed to a great extent, and in the session of 1854, members of every political party expressed an earnest desire, if possible, to put a stop to it. Many different schemes were proposed in the House of Commons; one of these was the appointment of an auditor, through whose hands all monies for the payment of election expenses were to pass. This plan has been sanctioned in the new "Corrupt Practices Prevention Act, 1854," in the expectation that the enactments on this subject will not only be a boon to public morality by putting an end to corruption, but will also prove of great service to candidates by diminishing the expenditure at elections. There can be little doubt that such beneficial results will flow from these new provisions, if candidates in future will determine strictly and honestly to comply with them.

Mode of Appointment.] The 15th section of the "Corrupt Practices Prevention Act" provides for the appointment of the election auditor in the following terms :—

"Whereas it is expedient to make further provision for preventing the offences of bribery, treating, and undue influence, and also for diminishing the expenses of elections; be it enacted, that once in every year in the month of August, the returning officer of every county, city, and borough, shall appoint a fit and proper person to be an election officer, to be called 'election auditor, or auditor of election expenses,' to act at any election or elections for and during the year then next ensuing, and until another appointment of election auditor shall be made; and such returning officer

shall, in such way as he shall think best, give public notice of such appointment in such county, city, or borough; provided that any person appointed an election auditor may be reappointed as often as the returning officer for the time being shall think fit; and that every person who shall be an election auditor on the day appointed for any election, shall continue to be the election auditor in respect of such election until the whole business of such election shall be concluded, notwithstanding the subsequent appointment of any other person as election auditor; and every election auditor upon his appointment shall make and sign before the returning officer the following declaration:—

‘I, A. B., do solemnly and sincerely promise and declare, that I will well and truly and faithfully, to the best of my ability in all things, perform my duty as election auditor, according to the provisions of “The Corrupt Practices Prevention Act, 1854.’

And every election auditor wilfully doing any act whatever contrary to the true intent and meaning of such declaration shall be deemed guilty of a *misdeemeanor*, and in *Scotland* of an offence punishable with fine and imprisonment.”

If the election auditor should die, resign, or become incapable of acting, the returning officer must appoint a fit and proper person to act in the room of such auditor; and the returning officer must give public notice of such appointment (s. 29). All monies, bills, papers, and documents relating to any election, which were in the hands or under the control of the election auditor going out of office, dying, resigning, or

becoming incapable of acting, are to be handed over to the new election auditor, with the exception of receipts or vouchers for payments actually made by the first auditor; and as to these, the new election auditor may have access to, and take copies of them, at all reasonable times (s. 30).

Such being the manner in which this new officer is appointed, we have next to consider the several duties which he has to discharge, and the obligations which other parties at an election have to observe with regard to him.

Duties of Election Auditor.] The first thing in the order of time, that has to be done at an election with reference to the election auditor, is the notification to him by all the candidates of the names of their respective "agents for election expenses."

Every candidate before or at the nomination, or as soon after as he conveniently can, must give to the election auditor, *in writing*, the names of his agents for election expenses. These agents must be appointed by a written authority. And each candidate must declare in writing to the election auditor that he has not appointed any other agents than those whose names he has given in; and also that he will not appoint any other similar agents without declaring it to the auditor. Sect. 31.

These agents for election expenses are the only persons who have any lawful authority to expend any money, or incur any expenditure relating to the election, in the name or on behalf of the candidate (a).

(a) The effect of this enactment upon the general responsibility of a candidate for the lawful acts of his agents will be considered hereafter under the head of agency.

These agents may themselves pay the *current expenses* of the election, which must be paid in *ready money*; but they must make out, and render from time to time to the election auditor, true and particular accounts of all such payments. When the agent for election expenses is appointed he must sign the declaration contained in the 31st section.

A candidate may pay his personal expenses, and he or his agents may also pay the expenses of advertizing in newspapers with reference to the election. All sums, however, so paid by him or by his authority in respect of *advertisements*, must be rendered in an account to the auditor, in order that he may include them in the general account of the expenses incurred at the election (a). Sect. 22.

A candidate and his authorized agents may also themselves pay any lawful expenses, which should *bonâ fide* be paid before the nomination day, and which cannot be conveniently postponed. In order to make such payments legal payments, and to avoid the penalty hereafter to be noticed, the candidate or his agents must, *on or before* the nomination day, make out and sign a full, true, and particular account of all such payments, with the names of the persons to whom the payments have been made, and deliver it to the election auditor. Unless these payments are so entered in the account they will be deemed *illegal* payments. Sect. 25.

(a) It is to be regretted that an account of the personal expenses of the candidate is not required to be rendered. A great deal of unlawful expenditure may be incurred under this head by a candidate determined to break the law.

With the exception of the personal expenses of the candidate, the cost of advertisements, the payment of expenses before the nomination day, and other current expenses requiring immediate payment in cash, all the expenditure at the election must pass through the hands of the election auditor.

No payment of any bill, charge, or claim, or of any money whatever in respect of an election, can be legally made (except as already mentioned), but through the election auditor. Any payment made otherwise, and any payment legally made by the candidate at the time, but not duly accounted for to the election auditor, will be deemed *illegal* payments. If any *illegal* payment is made by a candidate or by his authority, such candidate will forfeit, to any person suing for the same, the sum of *ten pounds*, with double the amount of the payment, and costs. Sect. 18.

It is lawful for any candidate to name a banker through whom the several election bills are to be paid; and then the election auditor may draw cheques on the banker so named, which cheques will be countersigned by the candidate, or some one appointed by him for the purpose. Sect. 18.

As the election auditor has to pay all the election bills and expenses they must all be sent into him. This is provided for by the 16th and 17th sections. Within one month after the day of the declaration of an election, all persons, as well agents as others, must send in their claims upon the candidate in respect of the election, either to the candidate or to one of his authorized agents, *otherwise* the claims of such persons will be absolutely and entirely barred. In the event of a person having a claim dying within the

month, the personal representative of such person is allowed a month to send in such claim, after obtaining probate or letters of administration. Sect. 16.

The candidate (if he is in the United Kingdom at the time of the election) or his agent, must send in all the claims *so made* upon him to the election auditor, within *three* months after the day of the declaration of the election, or within *two* months after the legal representative of a deceased creditor has sent in his claim. The candidate must not send in any claims of creditors which are barred by the 16th section. At the time that the candidate sends in any claim to the election auditor, he must state whether he admits the whole of the claim, or how much of it he admits to be correct. If a candidate or his agent should wilfully make default in sending in these claims, and the statement as to their correctness, within the specified time, the candidate will be liable to a penalty of *twenty* pounds; and also to a further penalty of *ten pounds* for every week in which wilful default is made in sending in such claims and statement. Such penalty may be recovered by any person suing for the same. Sect. 16.

If the candidate is absent from the United Kingdom at the time of the election, he must send in the claims and the statement as to their correctness, within *one* month after his return. Sect. 17.

Many a candidate who has left the place of his election congratulating himself upon the small amount of the expenditure that he has incurred, has been much shocked and surprised at receiving months, sometimes years, after his election, a long list of bills and charges which he is assured by his agents he is bound to pay.

To all such, the provisions in the recent statute will prove a great boon. It is now a moral duty on the part of the candidate to say to any claimant who has neglected to send in his bill within the appointed time, "I *may* not, and I will *not* pay you." The consequences of making such an illegal payment have already been pointed out. Sect. 18.

As all the expenses of the election are to be paid by or through the auditor, the candidate must either deposit a sum of money with the auditor for the purpose, or he must place the money in the hands of a banker, with instructions to the banker to honor the cheques drawn by the auditor and countersigned by himself, or an agent named for that purpose.

The election auditor must pay, so far as he is provided with funds for the purpose, all the claims sent in to him and admitted to be correct. The creditors, whose claims have been duly sent in to the candidate, if the candidate should dispute any part of their claims, or if sufficient funds are not provided to enable the election auditor to pay them, may sue the candidate for the balance, or the full amount of their claims. Nothing in the act is to be taken to limit the right of such creditor to proceed against the candidate to recover his claim. If the creditor obtains a judgment against the candidate, the candidate must forthwith send to the election auditor a copy or certificate of the judgment, and the candidate must also send to the auditor a statement of all monies, which may be paid by him, or recovered by the creditor in respect of such judgment. Sect. 20. No action can be settled or compounded without the consent of the auditor. Sect. 21. When an action is brought by a

creditor against a candidate, the election auditor may, at the request of the candidate, and by leave of one of the judges of the superior courts of common law at *Westminster* or *Dublin*, or one of the judges of the court of session in *Scotland*, as the case may be, pay into court the sum required. *Sect. 19.* Any sum tendered by an auditor, by the authority of a candidate may be pleaded in an action, brought to recover a claim, as the tender of the candidate. It will not be necessary on any such proceeding to prove the appointment of the election auditor. *Sect. 19.*

The election auditor must, as soon as he can, make out an account of all the expenses incurred at the election; specifying all the sums paid to him, or by him on behalf of each candidate; all the sums claimed, whether they have been allowed and paid, or not; also every sum paid into court, or recovered by action; to whom every payment was made, and what was the particular debt or liability; he must also state the amount paid for advertisements, and the total amount of the expenses incurred by each candidate (a). Such account is to be signed by the auditor; when it is necessary, he must from time to time make out a supplementary account, to be signed in the same way. *Sect. 26.*

All such accounts are to be kept by the auditor in a convenient place, open to inspection; when all the business connected with the accounts is concluded, the auditor must hand over all the accounts to the

(a) It is not clear whether this includes the personal expenses of the candidate or not; but probably it does not, as there is no obligation on the part of the candidate to give an account of them to the auditor.

clerk of the peace in counties, to the town clerk or officer performing the duties of town clerk in boroughs, and to the sheriff clerk in counties in *Scotland*; and he must hand over to the candidates the balance of monies in his hands, and all vouchers, except vouchers appertaining personally to himself. Sect. 27.

An abstract of the accounts signed by the auditor, and specifying the amount of the claims, how much is admitted to be correct, and how much is objected to, with the names of the parties to whom monies have been paid or are due, or who claim to be paid, is to be inserted by the auditor, *as soon as he conveniently can*, in some newspaper published or circulating in the place where the election was held. Sect. 28. This last clause does not point out very distinctly at what time the election auditor is to insert the abstract of the account in the newspapers; but it is clearly intended that it should be done before the business of the election has been concluded by him as spoken of in the 27th section. As the abstract is to mention the parts of claims admitted to be correct, and the parts objected to, and also the names of persons claiming to be paid, it is obvious that the business must still be in an incomplete state at the publication of the abstracts. It is probably intended that the auditor should make and publish his abstract of account as soon as he can after the receipt of the claims and the candidate's statement as to their correctness; for at that time he knows all that has been already paid by the candidate, and also what is the total amount that the candidate can by any possibility be called upon to pay.

Remuneration of Auditor.] This is provided for in

the 34th section. Each candidate at an election is to pay the auditor the sum of *ten* pounds as a first fee for his services in and about the election. The auditor also receives a commission at the rate of two per cent. upon every payment made *by him* for or in respect of any bill, charge, or claim sent in to him from the candidate on whose account such payment was made. This commission would not attach to payments made by the candidate or his agents and duly accounted for to the auditor.

The auditor is also to be paid his reasonable expenses, incurred by him in the business of the election and the performance of his duties as auditor. These are to be divided rateably among the candidates, and are to be charged as, and form part of, the election expenses of each candidate. Sect. 34.

Expenses when Candidate absent.] In case a person should be nominated at an election in his absence, and without his authority, the proposer and seconder may undertake to pay the lawful expenses of the election; and if such proposer and seconder should undertake to pay these expenses, they will then be in the position of agents appointed in writing by the candidate, and would be also liable to pay the fees of the auditor, and any of the lawful expenses of the election. Sect. 32.

Such are the provisions on this subject. It will be seen that the auditor has no discretion in paying the charges which are duly sent in to him. If claims of an unlawful character were received by the candidate, and by him transmitted to the auditor as correct, the auditor must pay them out of monies in his hands; he has no power to object to a tavern bill, duly sent in to him, or to make any observations upon its amount or nature, even though he should be persuaded that it

consisted of illegal items. If a bill for cockades, or bands of music, or any other charges prohibited by this, or any other statute, were sent into him, the auditor must pay them, and include them in his account, and publish them in his abstract.

Other Illegal Payments.] Attention has already been drawn to certain payments which will be deemed illegal, and which will subject the parties making them to a penalty; see sect. 18. In the recent statute there is a clause which, so far as England and Ireland are concerned, is a re-enactment of former provisions, whereby a candidate is forbidden, either by himself or his agents, to give or provide, either before, during, or after an election, any cockade, ribbon, or other mark of distinction, to any voter, or to any inhabitant of the place where the election is taking place. This provision is new as far as Scotland is concerned. Every person giving such cockades, &c., will forfeit two pounds for every such offence. In order still further to diminish expenditure, the act declares in the same section (a), that all payments made on account of any chairing, or for bands of music, flags, banners, or the cockades and ribbons already mentioned, are to be deemed *illegal* payments within the act (b).

In order to prevent other persons from making payments on account of a candidate, which would be illegal if made by the candidate himself, or his authorized agents, it is provided in the 24th section, that no person shall pay any of the expenses of an election, except to the candidate, or to the election auditor.

(a) Section 7.

(b) The 23rd section, which declares the giving of refreshment to voters an illegal act, will be considered under the head of *Treating*.

"No person shall pay, or agree to pay, any expenses of any election, or any money whatever, in order or with a view to procure or promote the election of any person to serve in Parliament, save to the candidate, or to or under the authority of the election auditor, *other than as excepted and allowed by this act.*"

It is not very clear what payments are intended to be permitted by these words, "other than as excepted and allowed by this act." Certain payments may be made by a candidate and his agents, but these when made must always be accounted for to the election auditor (*a*). Such are the expenses of advertising in newspapers, which may be paid by the candidate, or with his authority. It is probably intended, by the 24th section, that other persons, not being agents within this act, might legally pay such expenses of advertising in the first instance, but that it would be their duty to give a true account of them afterwards to the auditor. It would appear that these are the only expenses included in the exception above mentioned. Certain payments, fit to be paid in ready money, may be paid before the nomination day, to be accounted for afterwards; but these can only be so paid by the candidate himself, or his "agents appointed by him in writing, according to the provisions of the act." Sect. 25.

Expenses relating to the registration of electors, and subscriptions *bonâ fide* made to public and charitable purposes, are not to be deemed election expenses, and may legally be paid without any authority from the auditor. Sect. 24.

(*a*) Sections 22 and 25.

Penalty on person paying expenses of Candidate.]

Every person making such an illegal payment, in order to promote the election of a candidate, is liable in an action of debt to a *penalty* of fifty pounds, and of double the money agreed to be paid by him. The judge, however, who tries the action, if it shall appear to him that the payment was made without any *corrupt* or *improper* intention, may reduce the penalty or penalties to any sum not less than *forty* shillings, and he may also, if he think fit, direct that the plaintiff shall not be entitled to the costs of the action.

Actions for Penalties under the Act.] No person is liable to any penalty or forfeiture imposed by the act, unless some prosecution, action, or suit shall be commenced within one year after the commission of the offence, and unless within such space of a year, such person shall be summoned or served with the writ; provided that the person accused does not avoid the service of the summons or process by absconding or withdrawing himself out of the jurisdiction. Every such prosecution, suit, or process, must be carried on without any wilful delay. Sect. 14.

On the trial of any action to recover any pecuniary penalty imposed by this act, the parties to the action, and the husbands or wives of such parties respectively are competent witnesses and compellable to give evidence, according to the provisions and exceptions of 14 & 15 Vict. c. 99, and the Evidence Amendment Act, 1853, "provided always that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this act against the party giving it. Sect. 35.

CHAPTER III.

CORRUPT PRACTICES AT ELECTIONS.

1. *Bribery.*
 2. *Treating.*
 3. *Undue Influence.*
 4. *What Corrupt Acts avoid an Election.*
 5. *How and when Corrupt Practices can be
inquired into by a Committee.*
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By far the most important branch of election law is that connected with *bribery*, and those other corrupt practices, which not only render the whole proceedings of an election void, but also subject offenders to most serious penal consequences. It is by the commission of malpractices of this description that so many hard-fought contests are rendered useless, and so much money is wasted in long and harassing inquiries. It is therefore absolutely necessary that every person taking part in the business of an election, whether as candidate, agent, or elector, should be well acquainted with the existing state of the law on this subject.

In the present chapter it is proposed to consider the three offences which have been classed together in

the recent statute (a) as corrupt practices. Two of these, *bribery* and *treating*, have long been known as offences most seriously interfering with the proper freedom of elections. The third, *undue influence* is a new offence which the Legislature has thought fit to create, and to class with bribery and treating, as being a corrupt practice of a similar nature and equally hostile to the free exercise of the franchise by electors. As the consequences attached to the commission of each of these three species of corrupt practices at elections are the same, so far as the validity of the election is concerned, and as the penal consequences of each are nearly the same, it will be convenient to consider them together in one chapter.

Although these three offences are classified together, yet as they are very distinct in some respects, the nature and character of each will be separately considered; and the penal consequences attached to each will be pointed out. What corrupt acts will avoid an election, and by whom they must be committed to produce this effect will be the next subject to be considered. This will introduce the whole question of election agency, the principles of which will be exactly the same as applied to each of the species of corrupt practices. In the last place will be pointed out how and at what time any of these corrupt practices may be inquired into by an election committee.

(a) Corrupt Practices Prevention Act, 1854, 17 & 18 Vict. c. 102.

1. *Bribery.*

Although bribery was an offence at common law punishable with fine and imprisonment, and rendered the election where it occurred null and void, still the terrors of the common law were not sufficient to deter persons from corrupting electors. Statutes have been passed because the laws already in being had not proved sufficient to prevent corrupt and illegal practices at elections(*a*), and further provisions have from time to time been made with the view of stopping such corrupt practices; there can be no doubt that much good has been done by these enactments, but yet the wicked ingenuity of cunning men has often contrived to evade the sanction of these laws, and to baffle the intentions of the Legislature. In the year 1854, after all that has been done and written on this subject, we find the Legislature declaring in the preamble of an act, "That the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient." In the hope of remedying such deficiency, and in order to make the law more clear and better understood, the recent statute has not only introduced some new provisions on the subject of bribery, but has also consolidated all the existing laws on the subject(*b*).

By the first section of the act, the several acts of Parliament mentioned in a schedule are repealed; among these are all the enactments on the subject of *bribery* and *treating* relating to the three divisions of

(*a*) 7 Wm. 3, c. 4; 2 Geo. 2, c. 24; 43 Geo. 3, c. 74; 49 Geo. 3, c. 118; 5 & 6 Vict. c. 102, s. 20.

(*b*) 17 & 18 Vict. c. 102, "The Corrupt Practices Prevention Act, 1854."

the United Kingdom. All the enactments on these two subjects, from the Treating Act of Wm. 3, down to those contained in the 20th and 22nd sections of 5 & 6 Vict. c. 102, are repealed, and new provisions are introduced in their place.

The *second* section gives a new and enlarged definition of bribery. It will be seen that the *offer* of reward in any shape is included in the new definition, and made as serious an offence as the actual gift of money. This section is divided into five branches, and defines bribery in so far as the acts of the *corrupter* are concerned.

1. "Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, *give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election will be guilty of bribery.*"

2. The *second* branch of the definition is in all respects similar to the first, with the exception of the subject-matter of the bribe, which in the second part is spoken of as *office, place, or employment*, instead of the money or valuable consideration mentioned in the first.

These two portions of the section contain the description of the bribery which is most commonly practised, and which has most frequently to be inquired into by election committees. The remainder of the section will be considered a little later.

Any person guilty of any of the offences here described will be liable to indictment punishable with fine and imprisonment, and also to a penal action, in which he may forfeit 100*l.* to any one who shall sue for it.

The language of this section is so clear that it will not be necessary to make many observations upon it, except as to that part of each of the two heads or branches of the section, which refer to payments or rewards to a voter, on *account of his having voted* or refrained from voting. As to the other parts of the section, they include in plain and distinct terms every corrupt act towards a voter, and also *every attempt* to do a corrupt act. As has been already noticed, the *offer* of reward in any shape will now constitute the offence of bribery. The object of this section is to punish the evil proceedings and attempts of the corrupter. It will make no difference in *his* offence whether the voter agrees to the corrupt bargain, or professedly assents, intending never to fulfil his part of the transaction (a), or indignantly rejects the offer. In every case, so soon as any person has made the corrupt offer, *his* offence is complete. The offer, in order to become criminal, need not be made to the voter himself; if made to any person who is able, or is supposed to be able, to influence the voter, the crime will be complete, whether the proffered bribe be for the benefit of the voter himself, or of the person to whom the offer is made.

The time when the corrupt dealing takes place is immaterial, whether it be before during or after the election, before or after a voter has promised to vote.

(a) *Henslow v. Fawcett*, 3 Ad. & Ell. 51; *Harding v. Stokes*, 2 M. & W. 235.

In a recent case, *Chatham*, 1853 (a), a great deal of discussion took place as to whether the giving of a situation after the voter had promised his vote, and before he had voted, amounted to bribery. It appeared in that case, that a candidate canvassed the borough some time before the election, and that after he had received the promises of several voters he obtained situations for them, or for members of their families. There was no evidence that the voters had asked for these appointments before promising their votes. The case was very fully argued on more than one occasion, as the committee believed the case to be one without precedent. On the one hand, it was argued, that the independence of the voter was destroyed at the time of the election by the gift of the situation, and the language of *Buller J.* in *Allen v. Hearn* (b) was much relied upon, *viz.*, "The law requires the voter to be free till the last moment of giving or withholding his vote." It was contended on the other hand, that as the promise of the vote was antecedent to any appointment, or promise of appointment, there could have been no corruption or bribery in the transaction. The committee decided, that such conduct amounted to bribery. Had they come to a contrary decision they would have opened a door to every species of corruption (c).

Nature of Corrupt Reward.] Various as are the devices which have been contrived for the purpose of concealing bribery, the law is now too well known,

(a) 2 P. R. & D. 35.

(b) 1 T. R. 56.

(c) *Reg. v. Thwaites*, 22 L. J. Q. B. 238, *post*.

and too honestly administered, to allow them to escape detection. Every species of gift made without adequate consideration is a palpable bribe. The opening the houses of publicans, the giving custom to a tradesman, in order to influence their votes, the payment of pretended or colourable services, where none have been rendered, are all obvious modes of bribery. Also, whenever an exorbitant sum is paid for the doing something, for which a moderate remuneration might legally be given, no jury or committee would hesitate to declare the transaction to be corrupt. Loans of money, in order to influence votes, are as illegal as the gifts of money.

There are, however, one or two payments, the illegality of which has been much disputed. These may be considered as wagers on the result of an election, the payment of travelling expenses, and the payments to voters for loss of time. The difficulty can only arise when there is no obvious intention to influence the mind of the voter by the wager or such payment. It is clear that, whenever the wager is of such a nature as necessarily to produce an influence on the mind of the voter, the wager amounts to a bribe; so also if the payment for travelling expenses, or for loss of time is exorbitant, there could be no hesitation in pronouncing it a colourable payment, and a bribe.

Wager on the result of the Election.] Such a wager would be *illegal* in one sense because it could not be enforced in a court of law (*a*); but it may well be

(*a*) *Allen v. Hearne*, 1 T. R. 56. As the general tendency of such wagers was contrary to public policy, the Court would not assist a plaintiff in enforcing his demand.

doubted whether, a judge would direct a jury to convict a man of a misdemeanor, because he made a bet with a voter on the result of the election, unless it appeared that the bet was made with a corrupt intention to influence the opinion of an undecided or hostile voter.

The question of the legality of such bets has arisen on many occasions before committees of the House of Commons, but only on cases of scrutiny, where the inquiry was, whether the voter making the bet thereby forfeited his vote. Some committees have inquired whether the circumstances were such as to have influenced the voter, others have refused to make any such inquiry, but have declared all such wagers to be bribes (a).

Travelling Expenses.] Whether the payment of the actual expenses of travelling incurred by a voter amounts to an act of bribery, has been for a long time *questio vexata*. So long ago as the year 1784, Lord Mahon brought a bill into Parliament to prevent bribery by paying electors for travelling expenses and loss of time. A clause was inserted in the bill as it passed through the House of Commons, allowing the payment for *bond fide* travelling expenses, *provided* the money was paid directly for the coach-hire, and not into the hands of the voter. This bill was strenuously opposed by Lord Mansfield in the House of Lords. He contended, that "the palliatives of the bill, by which it endeavoured to allow of satisfaction for real

(a) F. & F. 404; K. & O. 416, 191, 193, 194, 195; K. & O. 254. See also Rogers on Elections, 253; Clerk on Com. 104, and *post*.

expenses, were liable to great fraud and abuse, because men's employments were so various, that an hour might be more valuable to one man than whole days to another, which rendered the difficulty of settling such accounts insurmountable" (a). The bill was rejected. The arguments here used by Lord Mansfield apply to payments for *loss of time*, and not to travelling expenses; the bill proposed to disallow the former, and to legalise the latter.

In the year 1806, Mr. Tierney brought in a bill expressly to declare and enact such expenses to be *illegal*. The bill was printed in three different shapes, as amended upon recomittals, and was ultimately thrown out (b). In the Report of the Committee on Election Expenses, 1834, p. x., there occurs the following passage:—"Your committee, by the increase of polling places, have in view a reduction of the great expense hitherto, in many instances, incurred in conveying voters to the poll, which expense has at all times been of doubtful legality. Some committees of the House have sanctioned, while others have disapproved the practice; and every election committee has fixed their own limit to such expenses. Mr. *Harrison* has given an opinion to your committee, that since the passing of the Reform Act, any expense in conveying voters to the poll is illegal; at all events, your committee hope that, by the increase of booths recommended, the future charge for conveyance to the poll, by whomsoever borne, will be much reduced" (c).

(a) 1 Luders, 67, note to *Ipswich case*.

(b) See vols. 6 and 7 Parl. Debates; also note to *Worcester case*, K. & O. 250.

(c) K. & O. 249.

The opinion of Mr. *Harrison* here referred to, is given at length in a note to the *Worcester case* (a). It must be observed that, though the Reform Act diminished the necessity for such expenditure, it did not declare that to be illegal which had previously been generally considered legal, unless made a means of corruption.

Several cases (b) are to be found in the volumes of Election Reports, where payments for travelling expenses, coupled with payments for subsistence and loss of time, have been deemed illegal. These payments were almost always of an exorbitant character; it is believed that there is no case to be found where a committee has decided a payment made for *bonâ fide* travelling expenses to be bribery. In a recent case, (*Southampton*, 1853) (c), a committee decided that *bonâ fide* payments made to voters for travelling expenses and loss of time were not illegal. It was proved before this committee, that in the great majority of instances nothing but the bare travelling expenses had been paid to the voter, and that in no case had a larger sum been given than was necessary to cover the expenditure by the voter for his journey, loss of time, and subsistence.

A great deal of discussion took place in both Houses of Parliament during the session of 1854, upon the legality of the payment of travelling expenses. The "Corrupt Practices Prevention Act" passed the House of Commons with a clause declaring such payments to be legal; in the House of Lords it was proposed to

(a) K. & O. 249.

(b) *Berwick*, 1 Peck. 402; *Durham*, 2 Peck. 178; *Oxford*, P. & K. 60; and *Ipswich*, 1 Lud. 41.

(c) 2 P. R. & D. 52.

insert a clause pronouncing them illegal; this clause was withdrawn: the clause inserted in the House of Commons was then struck out, and the Act has passed, leaving the law in the same state as it was before.

This matter has, on two occasions, come under the consideration of learned judges sitting at *nisi prius*. In one case, *Bayntun v. Cattle*, 1 M. & Rob. 265, Alderson, B. told the jury, "If the voters had been paid their actual expenses, a difference of opinion has prevailed as to the legality of such payments; some committees have held them to be legal—others, and probably theirs is the more correct opinion, that they are not legal; for it is obvious that such expenses, if allowed, would lead to great abuses."

In the case then before the learned judge, there could be no doubt as to the exorbitant and illegal nature of the payments.

In the case of *Bremridge v. Campbell*, 5 C. & P. 186, Tindal, C. J. directed the jury thus: "It will be for you to say, as to the sums paid to the several voters, whether they were paid really and *bonâ fide* for travelling expenses, and travelling expenses only; or were paid to induce them to give their votes. The question is, whether any part was paid as a *bonus* over and above the actual expenses of the party. If the payments were made for travelling expenses only, it seems somewhat singular that all the voters should be paid alike. It seems that 6*l.* was given to a man who lived only a few miles from B., who certainly in the first instance would not require travelling expenses at all. But it is said, that is no matter, because the other parties agreed, and there-

fore it is not bribery. But it seems to me that that only shows that all parties agreed in setting the statute at defiance. You will say whether the money was honestly paid merely for travelling expenses; and if you think it was not, then you will strike off such sums as you think exceeded a reasonable sum for the expenses."

The real question to be tried by a committee or a jury seems to be this: was the money paid *bonâ fide* for travelling expenses or not? If it was, the payment is not illegal. A candidate commits no illegal act in taking a voter to the poll in his own carriage, or in one hired by him to fetch the voter; and it is difficult to see, why the placing the mere hire of such carriage in the hands of the voter that he may pay it should amount to bribery. At the same time a committee might hold that such a payment, though made after the election, was one made to a voter *on account* of his having voted (a).

Payments for Loss of Time.] In the *Grantham case* (b), 1820, it was resolved, "That the practice of paying money to out-voters *under colour* of indemnifying them for loss of time, is highly illegal, subversive of the freedom of election, and tending to dangerous corruption." In the *Southampton case*, 1853, the committee, as has been already pointed out, did not consider the moderate payments for loss of time to the voter to be illegal. It may however be urged that such payments were made illegal by statute,

(a) This part of the section is considered more at length, p. 91.

(b) 75 Journ. 443.

although no corrupt contract was made with the voter before he voted that he should receive payment for his loss of time (a). There can be little doubt that if a bargain were now made with a voter that he should be paid for his loss of time in order to persuade him to vote, this would be an act of bribery, even though the sum paid was no more than he actually lost by coming to vote (b); and it seems to be equally clear that the giving money to a voter to pay for his subsistence during the election would amount to treating, even if it were not bribery by statute.

In the recent case of *Liverpool*, 1853, the sitting members were unseated, on the ground of bribery and treating having been committed by their agents. The committee reported to the House the names of twenty-three persons, who had been bribed by payments of *five* shillings each, and the names of two persons who had been bribed by payments of *four* shillings each. The committee reported further, "that the several sums of *five* shillings and *four* shillings, by which the above named electors are reported to have been bribed, were given to them on *account* of their *having voted* for the sitting members, under the name of the day's pay, and as in compensation for the time alleged to be lost by attendance at the election"—"that these payments were not of an amount beyond the average daily earnings of the voters who received them; but from the disposition of the polling places in the several wards of the borough, every voter might have polled without any such interruption of his em-

(a) 5 & 6 Vict. c. 102, s. 20.

(b) *Liverpool case*, 1853.

ployment as to occasion the loss of wages, and without any necessity for refreshment"—“that so far as the conduct of the election, on the part of the other candidates, came incidentally before the committee, there was no evidence, and the committee have no reason to believe, that any illegal practices took place with regard to the voters in the interest of such candidates, and, in the majority of the cases where bribery has been reported, it did not appear that the illegal payments received by the voters had been the primary motive in deciding their votes.”

This case attracted a good deal of attention at the time. Although it may have seemed hard upon the sitting members to be displaced on account of misdeeds of so comparatively trivial a character, committed by their agents without the knowledge or authority of the principals, still it is of the first importance that the law should be firmly administered. It is true that these payments for loss of time were on this occasion very small; but there is a fact noticed in the report of the committee which may afford some explanation of this circumstance. In order to justify the immediate issue of a fresh writ in this case, the committee report, that “there was no evidence, and the committee had no reason to believe that any illegal practices had taken place on the other side.” Had the contrary been the case, had the agents of the other candidates also paid money for loss of time, there can be little doubt that the “*day's pay*” would soon have increased in amount. At an election in the same city (*a*), the same class of voters had received 30*l.*, 40*l.*, and 50*l.* for their votes;

(*a*) *Liverpool*, 1831.

at *that* election both parties were in the market offering remuneration to the voters. Had one side sturdily refused to give a single farthing, the voter would at length have been obliged to be satisfied with a moderate day's pay. It is not for one moment suggested that there was any evidence of an intention at the election of 1852, to do more than give a moderate reward for the loss of time; but, had the other side been less scrupulous, had they also paid their voters for loss of time, no one can doubt that, as the polling day went on, the price would have risen, and amounts similar to those received in 1831 might have been again expected and demanded in 1852. The committee were right, therefore, in disregarding the small amount of the sum paid, and in pronouncing it a bribe.

If no bargain were made with a voter before he voted, that he should receive payment for loss of time, yet if such payment was made *after* the election, a committee would probably hold that it was a payment made on *account* of the voter *having voted*, and therefore, by force of the new statute, corrupt.

In the *Worcester case*, K. & O. 248, the committee decided, that the receipt of a sum of money for travelling expenses and loss of time by a voter *after* he had voted, but of which he had received no promise before he voted, did not invalidate the vote. The voter in this case stated that he had expected to receive something for his loss of time, but he had not asked for or been promised anything until after the election. There can be no doubt that this was a right decision at the time, independently of the question whether payments for loss of time were illegal or not. The vote in this case of scrutiny could not have

been invalidated, unless the payment for the loss of time had amounted to bribery at common law, or as defined by 2 Geo. 2, c. 24, s. 7. It certainly did not fall within the definition of bribery at common law, as given by Lord Glenbervie, 2 Doug. 400 (a), nor was it within the statute, for the voter had not taken the money to *give* his vote, or to *forbear to give* his vote. As was observed by Bayley J. in the case of *Lord Huntingtower v. Gardiner* (b), "The words used are clearly prospective, and not retrospective, and such an operation it probably was the intention of the Legislature to give them when the act passed." In the case here referred to, a voter had received money *after* an election, *for having* voted for a particular candidate, but *no agreement* for any such payment was made before the election. The Court of King's Bench held that this was not an offence within the 2 Geo. 2, c. 24, s. 7. It was observed in that case by Bayley, J., "That the Legislature might very easily have introduced into the clause the words 'that the voter should not receive money, &c.,' *for having voted*, had it been intended to make that an offence." That addition has been made to the definition of bribery given in the "Corrupt Practices Prevention Act, 1854." And that leads to the consideration of the most important change that has taken place of late years in the law on this subject.

(a) "Whenever a person is bound by law to act without any view to his own private emolument, and another, by a corrupt contract, engages such person, on condition of the payment or promise of money, or other lucrative consideration, to act in a manner which *he* shall prescribe, both parties are by such contract guilty of bribery." 2 Doug. 400.

(b) 1 B. & C. 297.

Rewards given after an Election.] Payments or rewards of any kind given after an election, in pursuance of a promise made before the election, were corrupt at common law, and also fell within the statute 2 Geo. 2, c. 24. The payments, &c., here intended to be prohibited, are payments made after the election where there has been *no* contract, express or implied, before the vote was given. It is in fact extending the penalties of bribery to that species of mischief which Bayley, J., held not to be within the 2 Geo. 2, c. 24 (a).

The words of the present statute are, "or shall *corruptly* do any such act as aforesaid, *on account of* such voter *having voted* or refrained from voting at any election."

The use of the word "*corruptly*" in this part of the section may give rise to an argument that the statute only intended to prohibit payments where some arrangement express or implied had been made with the voter before he voted; and, that unless some such understanding existed between the parties, the transaction cannot be deemed *corrupt*. It is clear, however, that that is not the intention. Every reward given in pursuance of a previous arrangement is included in the earlier part of the section, which forbids the offering, promising, or agreeing to procure any reward for the voter, &c. This word "*corruptly*" in this part of the section is altogether unnecessary; if the reward is given *on account of* the voter having voted or refrained from voting, it is corrupt by force of the statute, and is made bribery. The evil intention exists in disobeying the statute and giving the reward

(a) 1 B. & C. 297.

to the voter, *on account* of the way in which he has behaved with regard to his vote.

This enactment is not altogether new, though it has been much extended. The 5 & 6 Vict. c. 102, s. 20(a), declared "the payment, or gift of money, or other valuable consideration whatsoever, to any voter before, during, or *after* any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which was so paid or given on account of such voter having voted, or having refrained from voting, whether the same was paid under the name of head-money, or any other name whatsoever, and whether such payment was in compliance with any usage or practice or not, to be bribery." This act was passed expressly to put an end to the practice of giving money to voters or their families after an election on account of their *having voted* for a candidate. This was not an offence before the passing of that enactment (b). The word "corruptly" is not used in the section at all. In the *Durham case* (c), which

(a) Repealed by 17 & 18 Vict. c. 102.

(b) *Newcastle-under-Lyme*, B. & Aust. 453, and see 1 B. & C. 297, *sup.* p. 90; *Sudbury*, 2 Doug. 137; *Cirencester*, 1 Peck. 466.

(c) B. & Arn. 201. The principal difficulty in this case arose from the form of the petition, which alleged the payments to have been made *in pursuance and furtherance of* bribery prevailing at the election. This was necessary in consequence of the sessional order, passed to enable petitions to be presented after the usual time, in the case of payments made after the election. That order required the petition to allege specifically that the payment was made *in pursuance or in furtherance of* bribery or corruption. This order did not agree with the enactment. As a similar sessional order will probably be passed, it is to be hoped that this difficulty may be avoided.

was tried soon after the passing of the act, it was argued that payments made to voters *after* an election were not within the statute, unless there had been a previous promise, *express* or *implied*, and that none such had been proved in the case; the committee, however, decided that such payments were bribery under the statute, and avoided the election.

As the object of the new statute is to amend the existing laws, and to make further provision for securing the freedom of elections, it can hardly be contended that the Legislature intended to relax the law in this respect, and to leave that unpunished which was an offence before. It will be seen when we come to consider the question of bribery as affecting the voter, that the 3rd section of this statute omits this word "corruptly" in speaking of a voter receiving money or valuable consideration after an election, on account of his having voted, or refrained from voting. If it is bribery on the part of a voter to receive a reward after an election on account of the way in which he exercised his franchise at an election, although there was no understanding at the time of the election on the subject, it surely can be no less so on the part of the other party, who for the same reason and with the same motive makes the gift.

It must be observed that it is not the gift of money, or other valuable consideration only, after an election, which is here prohibited, but also the gift, or promise of a situation or employment to a voter after an election, if made from what the statute declares to be a corrupt motive. In short, every transaction that would amount to bribery at common law if it had taken place before the election, falls within the statutable definition of

bribery when taking place after the election. It will be no answer hereafter, either to a penal action or to an indictment, to say, that the voter was uninfluenced by any sordid or corrupt consideration at the time he voted, for the statute has said, you shall do no "such act" after the election.

There is no limitation as to the time within which such acts must be done in order to amount to bribery. In the section relating to the voter (section 3), the words "*after* any election" are used; but in the 2nd section there are not these words. The prohibition however is quite general—every person who shall corruptly do any such acts as are forbidden in the earlier parts of the section, on account of a voter having voted, or refrained from voting, is guilty of bribery. These acts must be subsequent to the election; and they would probably be considered equally criminal though they occurred some months, or years even, after the election.

Supposing a candidate or his agents were to distribute a small sum of money on the polling day *after* the election, to each of the voters who had supported such candidate, would it amount to bribery within this statute? Probably, no doubt would be entertained on this subject by any one. *Liverpool*, 1853. But what, if the sum of money, say five shillings, was given to each voter, without any previous bargain, *in order that* the voter might get some refreshment on the polling day after having voted? This was exactly the mischief which was intended to be suppressed by the 5 & 6 Vict. c. 102, s. 22, commonly called the Head Money Act. There can be no doubt, moreover, that such a distribution of money would fall within the plain

meaning of the words "gifts on account of a voter *having voted*." And yet, clear as this seems to be, and as it ought to be, a considerable amount of confusion is introduced by the 23rd section of the new act (a).

This section, after reciting that doubts had arisen whether the giving of refreshment to voters on the days of nomination and polling was illegal, enacts, among other things, that the giving of *money* or tickets to voters on account of their having polled, *to enable them to get refreshment*, is to be deemed an *illegal act*, subjecting the party offending to a penalty of *forty shillings* for each offence. The offence of bribery is an indictable misdemeanor, and also subjects the guilty party to a penalty of 100*l*. The offence, therefore, of giving money on the nomination day or the polling day for *refreshment*, is something different from bribery. Such gifts to voters on days prior to the nomination day would amount to bribery under the statute; nay more, would be, and are bribery at common law, being given, as is supposed, on account of their votes (b). If such a distribution of money were to take place a week after the election, from the same motive, it seems equally clear that that would amount to bribery. It is very difficult, therefore, to understand, upon what principle it is, that gifts immediately before and immediately after an election are less criminal than those at a more distant time (c).

(a) This section will be further considered under the head of *Treating*.

(b) *Reg. v. Thwaites*, 22 L. J., Q. B. 238, *post*.

(c) The great confusion introduced into the well established rules of law with regard to treating by this section will be considered hereafter.

What consequences, such gifts of money on the nomination and polling days, would have on the validity of the election will be considered hereafter.

It is only where the money is given as *dinner money*, or refreshment money, that the doubt can arise; the simple gift of money, be it 10*s.* or 5*s.*, as in the *Liverpool* case, 1853 (a), as "day's pay," or as head money, or a bare gift, would amount to bribery, and would avoid the election. It might be difficult to point out the distinction between 5*s.* given for a day's pay and 5*s.* given for a day's dinner.

Does this prohibition to give reward to a voter, continue for months and years after the election? Were a candidate to make a present of money to a voter two years after an election, would this be bribery? Would it avoid his election, supposing the sessional order to be continued, allowing a petition to be presented within a certain time after the payment? Would the obtaining an appointment for a political supporter in a borough, two or three years after an election, be an act of bribery?

These are extreme cases, but if the view here taken of these enactments be the correct one, there can be no doubt that these questions ought to be answered in the affirmative.

Assuming the decision in the *Durham* case, B. & Arn. 201, to have been a correct one, and it is believed that the propriety of that decision has never been questioned, it seems impossible to draw any line as to the period of time after an election, at which such rewards would cease to be illegal.

(a) *Ante*, p. 87.

In the second place, is the giving of money to a voter two or three years after an election, on account of the conduct of that voter at the election, bribery? This might be met by another question; Why have you given that man money, has he earned it? If the answer were: No, but he voted for me, or did not vote against me, the act says that such conduct is corrupt, and amounts to bribery. If the voter has fairly earned the money there can be no bribery; and no tribunal would say that a man was forbidden to give employment to a competent person, a supporter of his party, in preference to an opponent. In answer to the next question, it follows, that if such gifts amount to bribery, a sitting member making or authorising them, would be liable to forfeit his seat, if the House continues to allow petitions to be presented within a limited time after the making of such payments (a). The responsibility of the sitting member under such circumstances would, no doubt, be restricted to his own acts, or those expressly sanctioned by him. That peculiar kind of responsibility on the part of a candidate, for the acts done by his agents without his knowledge or authority, could not fairly be held to extend beyond the election.

As to whether the obtaining a place or office for a voter, two or three years after an election, on account of his conduct at such election, would be an act of bribery, is a point of some nicety. It is, however, still but a question of fact. If there were no other reason for putting the voter into the place or office

(a) *Ante*, p. 92, as to form of this sectional order.

but the one fact of his having voted or refrained from voting, the transaction would be a corrupt one. The questions that would probably be left by a judge, for the decision of a jury under such circumstances would be these. Was the man a fit, or an unfit man for the situation? Were more fitting persons, better recommended than this man passed over? Can you see any other reasons besides this man's conduct at the election which led to this place being obtained for him?

If the voter was fit to hold the situation, and as competent as others, no jury probably would find the person obtaining the situation for him guilty of corrupt conduct. It is submitted that such are also the issues which on a similar question a select committee would have to determine.

The view taken of these enactments may be considered by some persons harsh, and impracticable. Public patronage has been too long regarded by many as the fitting reward for political support at elections. Persons the least fitted for important situations have been thrust into them to the exclusion of better men, and to the detriment of the public service. There are not many persons who at the present day would stand up and openly defend such conduct. It is corrupt, and the Legislature has here declared it to be so, and has provided sufficient punishment. Now that all parties in the Legislature have professed their desire to put an end to corruption at elections, it only remains for those committees, to whom are entrusted the duties of deciding on alleged misconduct, honestly and consistently to carry out these enactments.

The *second* section describes also certain other proceedings which fall within the definition of bribery.

3. "Every person who shall directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure the return of any person to serve in Parliament or the vote of any voter at any election :"

4. "Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election : are to be deemed guilty of bribery."

These two divisions of the section are more particularly pointed at the prevention of that mischief, which used to be known as purchasing a borough; and are intended as a substitute for the enactments in 49 Geo. 3, c. 118. It does not often happen at the present time, that any one person, or any two or three persons, have sufficient influence in a borough, as to be able to sell the seat or return. Such was a common practice before the Reform Act put an end to many small boroughs. An instance of something similar was exposed in the session of 1853 in the *Harwich* election. The committee reported "that G. W. P., Esq., was not duly elected. That the said G. W. P. entered into an engagement with J. A., Esq., through his solicitor, in accordance with the terms of which engagement the said G. W. P. was on his part to pay certain sums of money on the event of his return,

and the said J. A. was to endeavour to procure the return of the said G. W. P. for the said borough" (a).

The present enactment is intended to meet a corrupt transaction of this kind. The report of the committee in the *Lyme Regis case*, 1848, 1 P. R. & D. 39, points out a mischievous influence obtained in a borough by the lending money to voters, on the condition that such voters should on any future occasion vote for the person lending the money, or for any one whom he might appoint to be a candidate for the representation.

There is one more class of persons who are to be deemed guilty of bribery within the second section.

5. Every person who shall advance or pay, or cause to be paid, any money to or for the use of any other person *with the intent* that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

This last division of the section applies to the pay-

(a) An amendment to this resolution was proposed in committee. "That though it was proved to the committee that a corrupt understanding existed between Mr. P. and the accredited law agent of Mr. A. for the purpose of procuring the return of Mr. P., that such understanding is not within the scope of the 49 Geo. 3, c. 118." This amendment was negatived on a division by three to two. An objection was taken to entertaining the question at all on account of the defective allegations in the petition, but the committee decided that the case should go on. See *Printed Minutes and Report of Proceedings*.

ment of money only ; and in order that a person contributing any money towards the expenses of the election should become liable to the penalties of bribery, he must know that the money is to be spent, or is in repayment of money that has been spent in bribery ; or he must have contributed the money that it should be applied in bribery. Money advanced to pay voters after an election will be as much bribery as money contributed to reward voters on a distinct corrupt understanding before the election. If the mode in which the money is intended to be spent, or has been spent, amounts to bribery within the statute, the advancing it for such a purpose will also be bribery.

It is by no means an uncommon practice for a candidate to pay a large sum of money into the hands of two or three persons, or into the hands of a banker, with permission to certain persons to draw upon such sum of money. This occurs most frequently at elections where it is considered expedient that a candidate should know as little as possible of the means used to procure his return. Were the money so paid in to be expended wholly or partly in bribery, would such candidate be guilty of bribery within the statute? Such conduct would be very suspicious to say the least. A jury, if nothing more was proved against him, would probably acquit him on a charge of misdemeanor, and might not find him liable to a penalty in a penal action ; but before a committee of the House of Commons his seat would be in great jeopardy. If money, so paid, were illegally applied, the persons drawing out the money would no doubt be considered the agents of the candidate. And unless the candidate gave to the election auditor a particular account of

the way in which such money had been applied (a), a strong presumption would be raised that he had given permission to apply such money in any way, legal or illegal, that might best secure his election.

Hitherto we have been considering bribery as the act of the corrupter ; but it may exist equally on the part of the voter.

Sect. 3. The following persons are also to be deemed guilty of bribery :

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election.
2. Every person who shall, after any election, directly or indirectly, by himself, or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote, or to refrain from voting at any election. Every person so offending will be guilty of a misdemeanor and liable also to forfeit the sum of *ten* pounds in penal action (b).

(a) *Ante*, p. 65.

(b) It will be seen that this third section does not make the "asking" for a bribe an act of bribery ; it was so under the 2 Geo. 2, c. 24. The present statute, while it makes the *offer* of a bribe to a voter an act of bribery, which it was not before, removes the asking for a bribe from the statutory definition of the offence.

The first part of this section contemplates those more corrupt cases of bribery, where there is a bargain, contract, or understanding on the part of the voter that he is to receive some reward, either before or after he has voted, on account of the way he may exercise his franchise at the election. There is little to be added on this subject to what has been previously said. Whatever it is corrupt on the part of one man to give, it is corrupt on the part of another to take. The acceptance of colourable employment by a voter, though nothing was said as to his vote at the time he was engaged, will amount to bribery on his part. So also the acceptance of money previous to the election by a voter, who had already promised his vote free from any corrupt motive, would no doubt be considered a bribe by a committee of the House of Commons. *Chatham*, 1853 (a). The mind of the voter ought to be free from bias until the last moment of giving or withholding his vote; *Allen v. Hearn*, 1 T. R. 56.

It is on petitions praying a scrutiny that the question of bribery as affecting the voter is most frequently considered. Wagers with voters on the result of an election have frequently been held to invalidate their votes, even when no corrupt intention appeared, either on the part of the voter, or the party betting with him; *New Windsor* (b), *Worcester* (c). In the case of *Allen v. Hearn*, Buller, J. observed, "If you put the case of a wager between a voter and another person who is not one, it is a palpable bribe." Some committees, on

(a) 2 P. R. & D. 35.

(b) K. & O. 191, 193, 194, 195.

(c) K. & O. 254.

the other hand, have refused to strike off a voter from the poll, on account of his having made a wager on the election, unless a corrupt intention appeared. *Youghal*, F. & F. 404; *Monmouth*, K. & O. 416 (a).

Were a voter to receive reward just before he voted, or immediately after he voted, there seems to be little doubt that he would be liable to an indictment, although no positive evidence could be produced of any previous agreement. A strong opinion was expressed by a very learned judge upon this question in a recent case of *Rex v. Thwaites* (b). This was a rule calling upon J. Thwaites to shew cause why a *quo warranto* information should not be exhibited against him, one ground being that many of the persons who had voted for him had been bribed to induce them so to vote. It appeared from the affidavits that several of the burgesses, as soon as they had voted for Thwaites, received from his agent tickets, which they were directed to take to an inn. When they arrived at the inn, they were shown into a room where an agent of Thwaites gave them, upon their presenting the tickets, the sum of 2s. 6d., and also one or two 4d. tickets for ale and spirits. It was contended, on the part of the defendant, that these men were not bribed, because it must be assumed that there was no previous corrupt contract or agreement, that no inducement had been held out before the votes were given, for none was stated in the affidavits, and that to constitute bribery, under the

(a) Rogers on Elections, 253; Clerk on Elect. Com. 104.

(b) 22 L. J. Q. B. 238; S. C. 1 E. & B. 704.

Municipal Corporation Act (a), (5 & 6 Wm. 4, c. 76, s. 54,) there must have been a corrupt contract; and the case of *Lord Huntingtower v. Gardiner*, 1 B. & C. 297, was relied upon to show that there was no bribery without a previous agreement to pay. Lord Campbell, C. J., observed in the course of the argument, "The giving and receiving of the ticket is evidence, from which a previous agreement might be inferred. We cannot assume that there was no previous agreement." The rule was afterwards discharged. Lord Campbell, C. J. said, "I am of opinion that this rule ought to be discharged. If it turned on the objection as regards the charge of bribery, I should have thought the rule ought to have been absolute, because there is evidence from which the jury would be justified in finding that there had been a previous agreement that 2s. 6d. was to be received, and that upon such agreement the votes were given; but if all the votes objected to on that ground be struck off, *Thwaites* still has a majority."

This was the view taken by the Lord Chief Justice of the Court of Queen's Bench, in a case depending on a statute in which the payment of money *after* an election, on account of a person having voted, was not forbidden.

The second division of the *third* statute is passed expressly to prohibit a voter from receiving money for his vote after an election. It has already been pointed

(a) This section defines bribery as "the asking, taking, agreeing for, or contracting for reward to give or forbear to give a vote." These words are the same as those in 2 Geo. 2, c. 24, and neither act contains the words, "or for having voted."

out (a), that this enactment cannot apply to cases, where a bargain, contract or understanding existed before the election ; because these cases fall within the first division of the section. Every person who after an election receives reward, on account of his *having voted or refrained from voting* is guilty of bribery. This section omits the word "corruptly," which is used in the second section. The word, as has been before contended, was unnecessary, for the *malus animus*, the corrupt intention, is manifested by the wilful acceptance of a reward contrary to the provisions of the statute.

The receipt of money by electors after an election was not bribery at common law, nor was it within the statute 2 Geo. 2, c. 24 ; *Lord Huntingtower v. Gardiner*, 1 B. & C. 297. In the *Sudbury case*, 2 Doug. 137, "the petitioners stated, that they could prove a very public distribution of money among the voters for the two sitting members, after the election, but as they did not say they had any proof either of money being given, or promises of money being made by them *previous to or during* the election, the committee *seemed* to think this would not affect the seats ; and no evidence was gone into on this head." In the *Oirencester case*, 1 Peck. 466, the petitioners proposed to prove that an agent of the sitting members had declared to the voters near the hustings, in the presence of the sitting members, immediately *after* the election, that the voters might receive half a guinea each instead of a dinner. It was not pretended that this could be connected with a prior promise, and the

(a) *Ante*, p. 91.

committee refused to receive the evidence. A learned author says: "A distribution of money after an election, unless coupled with an act done, or a promise made before, however it may induce suspicion, will not raise a presumption in a court of justice (a).

Such continued to be the state of the law until the year 1842, when, in consequence of the report of the committee in the case of *Newcastle-under-Lyme* (b), the 5 & 6 Vict. c. 102, s. 20, was passed to put an end to all such distributions of money for the future. The effect of this statute has been before considered (c).

The *Durham case*, B. & Arn. 201, which occurred soon after the act passed, proved the determination of the committee to give full effect to the new enactments. The clause has been repealed by the Corrupt Practices Prevention Act, 1854, but it has been replaced by provisions equally stringent.

It may be as well to point out here an important change introduced by the recent statute, though it does not bear directly upon the question of bribery.

The 7 & 8 Geo. 4, c. 37, is entirely repealed by the recent statute. That act, after reciting that it was expedient to make further regulations for preventing corrupt practices at elections, and for diminishing the expense of such elections, provided, "that if any person should, either during an election, or within six calendar months previous to it, or within fourteen days after it, be employed at such election as counsel, agent, attorney, poll clerk, flagman, or in any other capacity, for the purposes of the election, and should

(a) Simeon, 198, *sed vide* Reg. v. *Thwaites*, *ante*, p. 104.

(b) B. & Aust. 436.

(c) *Ante*, p. 92.

at any time either before, during or after such election accept or take from any candidate, or from any person whatsoever, for, or in consideration of or with reference to such employment, any sum or sums of money, retaining fee, office, place, or employment, &c., such person should be deemed incapable of voting at such election, and his vote if given was utterly void and of none effect."

This act was intended to forbid persons having real *bond fide* occupations connected with the election from voting; and great numbers of voters have been struck off the poll books by committees in consequence of their having acted as paid agents, flagmen, messengers, &c., at elections; whenever such employments were colourable only, they were struck off on the ground of bribery. The disqualification of such persons to vote at any future elections is removed by the repeal of the statute here quoted (a).

The consideration of the questions, what acts of bribery will avoid an election, and at what time bribery can be inquired into by a committee of the House of Commons, will be postponed for the present.

The same consequences being attached to treating and undue influence as to bribery, it will be better to enter upon this subject when these two offences have been defined. The principles of election agency are exactly the same in each species of corrupt practice; and the jurisdiction of election committees is the same in each. In one circumstance only does bribery now

(a) It was proposed in the House of Commons to insert a similar provision in the new act, but after some discussion the clause was withdrawn. 109 Journ. 424.

differ from the other two species of corrupt practices, and that is in the mode, or rather order of proof before a committee. By the 4 & 5 Vict. c. 57, acts of bribery by an alleged agent may be proved before the agency has been established. This cannot be done in cases of treating. Committees still, as a general rule, require that the agency shall be proved before any illegal acts are allowed to be given in evidence to implicate the candidate. An exception to this rule is allowed, upon the representation that the facts to prove agency are so intermingled with the evidence of the illegal acts themselves, that one cannot conveniently be separated from the other (a).

2. *Treating.*

Treating at Common Law.] It has been stated in many works, and on several occasions that treating was always an offence at common law. Although treating, as ordinarily understood at the present day, is altogether the creation of the statute law, it may be not altogether useless to inquire how far the proposition is accurate, that treating was a common law offence.

It is observed by Mr. Rogers that "treating for the purpose of influencing an election, and procuring a return, was always an offence at common law as a species of bribery" (b). In the same way, Lord

(a) Clerk on Elect. Com. 154.

(b) Rog. on Elect. 261.

Lyndhurst, in the often cited case of *Hughes v. Marshall* (a), speaks of one description of treating. He there says, "another point has been made independently of the treating act; and it is said that it is not very material whether the case fall within the statute or not; for that if the plaintiff furnished the provisions *with the view to influence* the election, such conduct would be illegal at common law, and no action would be maintainable; now that is true if such a case were made out; if *bribery* is brought home to the party, he is guilty of an offence at common law, and can maintain no action." Treating thus viewed as bribery was no doubt an offence at common law. The man who gave reward to a voter, in order to bind that voter to his interest, was guilty of bribery, in whatever form the reward was given; whether as money, or in the shape of meat and drink. Whenever such conduct can be proved it should be regarded in the light of bribery. Such, however, is not what is commonly understood by treating, which is the distributing of meat and drink at an election, without any corrupt bargain or understanding whatever with the voters. And this, probably, was not an offence at common law.

Sir B. Whitelocke, while describing the tenderness of the law of Parliament with regard to preserving the freedom and indifferency of elections, says, "As the law permits no exemptions or restraints against the freedom of electors, so it forbids solicitations, bribings, or gratifying of sheriffs, head officers, or others, by any persons, or giving money, or rewards (*it were well if it extended to drink and entertainments*) to free-

(a) 2 C. & J. 118.

holders or inhabitants to obtain their suffrages, or procure one to be elected." (a) From these words, "it were well if it extended to drink and entertainments," it has been contended that a man could not have been bribed by drink at common law. Probably what was meant was this, that the mere distribution of drink at an election to electors and others was not a common law offence, unless it could be shown that it was given away upon a contract or understanding that the parties receiving it were to give their votes in consequence, in which case it would amount to bribery.

In the year 1669 a debate took place "touching the making void of all future elections, which shall appear to be procured by money, or by entertainments of meat and drink." It was in the year 1677 that the first step was taken to stop the growing evil of giving away drink and other entertainments at elections.

Resolved, "That if any person, hereafter to be elected into a place for to sit and serve in the House of Commons, for any county, town, port, or borough, after the *teste* or the issuing out of the writ or writs of election, upon the calling or summoning of any Parliament hereafter, or after any such place becomes vacant hereafter in the time of Parliament, shall by himself, or by any other in his behalf, or at his charge, at any time *before* the day of his election, give any person or persons, having vote in any such election,

(a) Vol. 1, p. 387. In the *2nd Southwark case*, Cliff. 154, and in the *Herefordshire case*, 1 Peck. 191, the whole history of the law as to treating is minutely traced. The same subject is also treated at length in the able work of Mr. Warren on *Elect. Com.* p. 503.

any meat or drink, exceeding in the true value *ten* pounds in the whole, in any place or places but in his own dwelling-house or habitation, being the usual place of his abode for six months last past; or shall before such election be made and declared, make any other present, gift, or reward, or promise, obligation, or engagement to do the same, either to any such person or persons in particular, or to any such county, city, town, port, or borough in general; or to or for the use or benefit of them, or any of them; every such entertainment, present, gift, reward, promise, obligation, or engagement is by this House declared to be *bribery*; and such entertainment, present, gift, reward, promise, obligation, or engagement being duly proved, is and shall be sufficient ground, cause, and matter to make every such election void, as to the person so offending, and to render the person so elected incapable to sit in Parliament by such election; and hereof the committee of elections and privileges is appointed to take especial notice and care, and to act and determine matters coming before them accordingly." It will be seen that there is no allusion in this resolution to any corrupt bargain or understanding. As this resolution was the declaration of the House of Commons alone, and not the act of the Legislature, it would be important to ascertain whether any elections were ever avoided by force of it. Between the years 1677 and 1696, when the 7 Wm. 3, c. 4, was passed, a great number of elections were avoided on petition. In the great majority of cases this happened by reason of the misconduct of the returning officers. There are a few cases where elections were questioned on the ground of bribery and corruption, and were on that account

avoided. In 1679 a petition was presented from *Leicester*, complaining of bribery and other undue practices, but nothing appears to have been done upon it. In 1689 the *Stockbridge* and *Mitchell* elections were avoided for bribery. In 1690, *Wootton Bassett*, the House inquired into the alleged bribery, and ordered an agent of the candidate to be taken into the custody of the serjeant-at-arms, for having distributed *bribes* to the electors. In 1691 two elections at *Chippenham* were avoided for bribery. In 1693 the *Stockbridge* election was declared void for bribery. In several other cases, which are to be found in vols. 9, 10, and 11 of the Journals of the House of Commons, inquiry was made by the House into alleged acts of bribery. It is remarkable, however, that in no case was an election questioned on account of *treating*, or as it was then more frequently called, *debauchery* at elections. There is evidence in several of the cases above cited, and in others (a), that drinking at the expense of candidates was taking place at these elections; it does not appear, however, to have been in any case brought forward as a serious charge. The existence of such practices is, moreover, proved by the introduction into the House of Commons, in the year 1680, of a "Bill to prevent the offences of bribery and *debauchery* at the election of members to serve in Parliament." The bill was read twice, and was then dropped. Again, in the year 1689, another bill to prevent abuses in excessive expenses in election of members reached a second reading. These attempts to legislate on this matter seem to prove, not only the

(a) 10 Journ. 522, 638, 644.

existence of the evil, but also that there was not at the time any remedy sufficient to meet it.

Immediately after the passing of the 7 Wm. 3, c. 4, an election was questioned on the ground of treating. 11 Journals, 599, *Aldborough*; a petition was presented, complaining that Henry Fairfax had, in contempt of the act of last session of Parliament, publicly spent money in treating the electors for their votes, and it was afterwards resolved, *nemine contradicente*, that Henry Fairfax, having, contrary to the late act of Parliament, expended money, in order to his election to serve in this present Parliament, is disabled and incapacitated upon such election, 11 Journals, 632. And again, in 1700, an election for *St. Albans* was questioned on the ground that the majority had been obtained by bribes and *treats*.

The circumstance that no elections were questioned on the ground of treating before the passing of this statute, but that it was put into operation immediately on its passing, seems to establish what is here contended for, *viz.*, that the giving of meat and drink to electors at an election was not an offence at common law, except when it was done upon a contract or understanding that the voter should be influenced by it, and that such is the view taken by that able judge (Lord Lyndhurst) in the case of *Hughes v. Marshall*, has been before pointed out.

Treating by Statute.] It is as a statutable offence that treating will now be considered. The first act on this subject was the 7 Wm. 3, c. 4, "An Act for preventing charge and expense in elections of members to serve in Parliament." Though that act is repealed by the Corrupt Practices Prevention Act, 1854, it

will be useful to consider what it was that was prohibited by that statute. "No person hereafter to be elected, after the teste of the writ, or vacancy in the place, shall by himself, or by any other ways or means on his behalf, *or at his charge*, directly or indirectly give, present, or allow to any elector, any money, meat, drink, entertainment or provision, or make any present, gift, reward or entertainment, *or shall at any time hereafter make any promise, &c., to give or allow any money, meat, &c. to any such persons in particular, or to any place in general, in order to be elected, or for being elected.*" In the case of *Ribbons v. Orickett*, 1 B. & P. 264, it was argued that the words "in order to be elected" applied only to the latter part of this clause, and not to the first part, and it is said that the court agreed in this view of the statute. These words, "in order to be elected, or for being elected," are used in the new enactment, and it will be important to consider their meaning hereafter.

It will be seen that the only persons forbidden by this act to treat electors are "the persons to be elected," which words comprehended not only the persons actually elected, but also those who unsuccessfully attempted to be elected. In the case of *Ward v. Nanney*, 3 C. & P. 399, it was argued that the statute did not apply to an unsuccessful candidate, but Park, J., who tried the case, said that he was decidedly of opinion that was not so. Of course, all those persons who are the *agents* of the person forbidden to do these unlawful acts are equally prohibited, and the statutable consequences of their acts fall upon the candidate who sanctioned them. The time at which the giving of the meat, &c. was illegal, was after the issuing of the writ

or vacancy of the seat. Down to the year 1842 this was the only enactment relating to treating in *England* and *Scotland*.

The *Irish* act on the same subject is the 35 Geo. 3, c. 29, s. 19: "No person to be hereafter elected to serve in Parliament for any county, &c. shall, after the *teste* of the writ of summons to Parliament, or after the vacancy shall have happened to supply which the election shall be held, by himself, his friends, or agents, or any person or persons employed on his behalf, directly or indirectly give, present, or allow to any person or persons having a vote or votes in such election, any money, meat, drink, entertainment or provision, *cockades, ribands, or any other mark of distinction*, or make any present, gift, reward or entertainment, or shall *at any time hereafter* make any promise, agreement, obligation, or engagement, or give or allow any money, meat, drink, provision, present, entertainment or reward to or for any such person or persons in particular, or to any such county, &c. in general, or to or for the use, advantage, benefit, employment, profit or preferment of any such person or persons, place or places, *in order to be elected, or for being elected* to serve in Parliament for such county, &c.; and that every person so giving, &c. shall be and is hereby declared to be disabled and incapacitated to serve in Parliament upon such election for such county, &c."

This act is not one of those contained in the schedule of repealed statutes annexed to the "Corrupt Practices Prevention Act, 1854." The omission was probably accidental. The 4 Geo. 4, c. 55, which only repealed the 35 Geo. 3, c. 29, so far as it related to "any county of a city or county of a town," is partially

repealed; but the 79th and 81st sections of this act, which are now repealed, related to treating and bribery at counties of cities and counties of towns only. It will be seen that the 19th section of 35 Geo. 3, c. 29, makes the giving of *cockades*, *ribands*, and other marks of distinction an act which will disable and incapacitate the candidate to serve in Parliament upon the election. That never was the case in *England*. The 7 & 8 Geo. 4, c. 37, s. 2, which applied to England only, forbade the giving of cockades, &c.; and the *seventh* section of the new act imposes a pecuniary penalty on the candidate making such presents in any portion of the United Kingdom. The penalty, therefore, on a candidate for giving cockades, &c., in Ireland, is much heavier than it is in Great Britain.

The 35 Geo. 3, c. 29, s. 19, is very similar to the 7 Wm. 3, c. 4, but the words "or at his charge," do not occur in the Irish act. And it may with greater force be contended, that the words "in order to be elected, or for being elected," do not govern the *whole* of the section, but apply only to the latter part, which forbids a candidate "at any time hereafter" to allow money, &c., to persons in particular, or to a place in general; and that the act of giving entertainment after the *teste* of the writ, is in itself so illegal as to avoid the election. This was the construction put upon the 7 Wm. 3, c. 4, by the Court in the case of *Ribbans v. Crickett* (a). The difference between the two sections is this, that in the 7 Wm. 3, c. 4, the words "after the teste of the writ of summons to

(a) 1 Bos. & Pul. 264.

Parliament," seem to apply to the whole of the section, while in the Irish act they clearly apply only to the *first* part of the section. The section is divided into two parts: if any person shall after the *teste* of the writ, &c.;—or, shall at any time hereafter, &c.

Whether the words "in order to be elected, or for being elected," apply to the whole of the section or not, is probably of no great importance. If money, meat, drink, or entertainment, is supplied to a voter at an election because he is a voter, and on no other account, there could be little doubt in the minds of either a jury or a committee, that the money, &c., was given by the candidate "in order to be elected, or for being elected."

It has often been observed, that these statutes were bribery acts, as well as treating acts. It may, however, be questioned whether this is quite accurate, if by it is meant, that they were intended to punish what was bribery at common law. These statutes prohibited the distribution of money at an election even in cases where there was no contract with the voter; recent legislation, it is true, has made all such gifts of money at, and after elections, to amount to bribery. It may be said, therefore, that these treating acts comprise what is now bribery, but what was not bribery when they were passed" (a).

In the year 1842, the 5 & 6 Vict. c. 102, s. 22, introduced some further provisions against treating. The section recited that the 7 Wm. 3, c. 4, had been found insufficient to prevent corrupt treating at elec-

(a) There can be no doubt that this neglect to repeal the 35 Geo. 3, c. 29, arose from an oversight, which will soon be remedied.

tions, and enacted, "That every candidate or person elected, who should by himself, or by or with any other person, or in any manner, directly or indirectly, give or provide, or cause or knowingly allow to be given or provided, *wholly or partly*, at his expense, or pay wholly or in part any expenses incurred for any meat, &c., to or for any person, at *any time*, either before, during, or after any such election, for the purpose of corruptly influencing such person, or *any other* person, to give or to refrain from giving his vote in any such election, or for the purpose of corruptly rewarding such person, &c., should be incapable of being elected or sitting in Parliament for that place during that Parliament."

It will be seen that this section extended the time during which the giving of entertainment was to be considered illegal; but in order to incapacitate the candidate, he must be either personally cognisant of it, or pay some portion of the expense.

A candidate might have been disqualified under the act of William 3, although he neither knew of the treating, nor paid for any portion of it. Whether the act was done on his behalf, or whether it was so done at his charge, he was equally affected by it (*a*). It has been contended of late, that committees will not unseat a member unless he is shewn to have been cognisant of the illegal transactions at the time, or to have paid for them afterwards. There are few, if any, authorities to warrant such a position. There is no difference as to the responsibility of a candidate for the acts of his agent in cases of bribery or treating.

(a) *Huddersfield*, (1853), 2 P. R. & D. 128.

And in a case of bribery, although the committee may report that the acts were committed without the knowledge or consent of the candidate his election will be annulled all the same; *Newcastle-under-Lyme*, B. & Aust. 446. In cases, where the treating took place *prior* to the *teste* of the writ, it was right to inquire, whether the candidate allowed it, or paid for it; unless he had done so, the case was not within the statutes; but if the treating was *after* the *teste* of the writ, committees have not required evidence that the candidate allowed it, or paid for it. In all such cases they have reported simply that the candidate was by his agents guilty of treating. If, in any case it appeared, that the candidate was personally cognisant of bribery or treating, this matter has been specially reported against him. In one case, *Carlisle*, 1848, the committee after the usual resolution, that Mr. Hodgson was by his agents guilty of treating at the last election reported specially, "That it was not proved that these acts of treating were committed at the expense of the said Mr. Hodgson; Mr. Head, a banker of Carlisle, having advanced funds to the extent of more than 1200*l.*, the greater part of which was expended by means of tickets for refreshment, issued to the voters at Mr. Hodgson's committee room during three weeks previous to the election, *and up to the close of the poll*, and receivable at numerous public houses." One part of the treating in this case fell within the 5 & 6 Vict., *viz.*, so much as took place prior to the *teste* of the writ; for this Mr. Hodgson was not responsible as it was not at his expense. But it went on "*up to the close of the poll*;" and as there was no doubt in the case that Head was an agent, there can be no question that Mr. H. was incapaci-

tated to serve on such election. There had been treating after the *teste* of the writ on his behalf, although not at his charge; 7 Wm. 3, c. 4.

It would appear, however, that this idea, that a candidate ought not to be disqualified by acts of treating committed at his election, unless he authorised them or paid the expenses thereof, has been recently accepted as a correct position in parliamentary law. The *Dungarvan* committee, 1854, probably influenced by this view, reported *inter alia*, "That, previous to and *during* the election of 1852, several tierces of porter were ordered and paid for by James Boland, and supplied for the use of the tenants and voters on different townlands, who were the friends and supporters of Mr. Maguire, and that the same James Boland was the person principally *entrusted* with the payment of the expenses of the election on behalf of Mr. Maguire; that the order, payment, and supply of this porter were without the knowledge of Mr. Maguire, and neither authorised, nor knowingly allowed by him." And they reported Mr. Maguire to be duly elected.

The porter in this case was consumed principally on the days of nomination and polling, in a house hired by Boland for the purposes of the election; and that he was an active agent appears not only from the circumstance reported by the committee, but from all the evidence in the case. It is difficult to reconcile the decision of this committee with legal principles. They seem to have held that, one of the principal agents of a candidate, the agent entrusted with the payment of the expenses of the election, might distribute porter at the committee rooms of the candidate, to any voters

who might come there, without thereby invalidating the election of his principal. And yet, as this was done on behalf of Mr. Maguire, and in order that he might be elected, it is submitted, with all respect for the committee who came to this resolution, that it was not according to law (*a*). This question of the parliamentary responsibility of candidates, for the acts of their agents, will be considered in a subsequent section of this chapter, viz. "what acts will avoid an election."

It will be observed that the 5 & 6 Vict. c. 102, s. 22, speaks of the treating taking place "for the purpose of corruptly influencing and corruptly rewarding voters." The effect of these words is probably the same as of those in the statute of Wm. 3, "in order to be elected or for being elected." If entertainment is given to a voter by a candidate, in order that the candidate may be elected, it is given corruptly to influence the voter. If it be given by the candidate "for being elected," it is given for the purpose of "corruptly rewarding the voter." The treating was declared to be equally corrupt under this latter act, whether it was given to the voter himself, or to any other person in order to influence him.

(*a*) *Dungarvan case*, 1854, *printed Minutes*. This is not the only point in which this committee departed from the generally accepted rules of parliamentary law. The report above referred to related to an election in 1852, into which, it must be submitted, with all deference for the learned chairman of the committee, they had no jurisdiction to inquire. This will be discussed at length hereafter. Another decision of this committee was, that a supper to voters, given and paid for by the candidate, and at which he was present, did not incapacitate him, the supper having taken place on the evening of the polling day, *post*, p. 136.

Both of these enactments, viz. the 7 Wm. 3, c. 4, and the 5 & 6 Vict. c. 102, s. 22, are repealed by the Corrupt Practices Prevention Act, and new provisions are substituted in their place.

Section 4 of 17 & 18 Vict. c. 102.

“Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time, either before, during, or after any election, directly or indirectly give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of *fifty* pounds to any person who shall sue for the same, with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect.”

This section is a consolidation of the two repealed enactments. It extends the operation of the provisions of the 7 Wm. 3 to the larger periods included in the 5 & 6 Vict. c. 102, s. 22. A candidate who by himself, or by any person, or by any means on his behalf,

entertains electors before, at, or after an election, in order that such candidate may be elected will be incapacitated, whether he himself pays for the entertainment or not. The clause is in the disjunctive. Every candidate who shall, by himself or others give, *or* shall be accessory to the giving, *or* shall pay any part of the expenses, will be guilty of treating.

The person who will incur the pecuniary penalty is the candidate, and the candidate only. Now for the first time treating is made an offence; not an indictable offence (*a*), but one punishable, by the forfeiture in a penal action, of the sum of 50*l*. This section also introduces a new disqualification as affecting a voter who is treated. Every voter who shall corruptly take any meat, &c., shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect. It was at one time a question whether a voter who had been treated at an election could be struck off the poll; but the general opinion was, that, prior to this enactment, the acceptance of treating did not invalidate a vote, unless some corrupt negotiation with regard to the vote could also be established, which made it amount to an act of bribery. See *Ipswich*, F. & F. 280; *Lyme Regis*, B. & Aust. 529; *Kinsale*, 1848 (*b*). Hereafter, any voter who knowingly accepts from a candidate, or from any person whom he has reason to believe is acting as the agent of a candidate, any gift of meat or drink, before, during, or after the election, will be liable to be struck

(*a*) Where a statute making a new offence, only inflicts a forfeiture and specifies the remedy, an indictment will not lie. *R. v. Wright*, 1 Burr. 543; *R. v. Douse*, 1 Ray. 672; and 1 Russ. on Crimes, 50.

(*b*) Clerk on Elec. Com. 189, and 1 P. R. & D. 18.

off the poll in a case of scrutiny. Probably no voter would be so struck off, unless the treat or entertainment took place shortly before or shortly after the election (a). The 23rd section, which has introduced confusion into the whole law on this subject creates here a difficulty. If a voter accepts a five shilling dinner on the nomination day, or on the polling day, from a candidate, is he not *treated*? This section has created doubts upon this subject; and probably until this section is repealed committees will come to different conclusions, according to the views the majority in each may entertain, as to the mischief or comparative harmlessness of the distribution of meat and drink, &c. to voters at elections (b).

In other respects this new enactment introduces very little change into the former state of the law; but it leaves still to be determined by each committee the important question of what is treating.

Treating, what is it?] A great deal has been said of late years in both Houses of Parliament, and elsewhere, on the impossibility of defining treating. In the year 1848 it was stated in the House of Commons, in a discussion on the North Cheshire election, by a noble lord who has paid a great deal of attention to election law (c), that treating might exist without any intention of corruptly influencing voters; another honourable member (d) said it was quite impossible

(a) In the House of Commons, it was proposed to limit this disqualification of the voter, to cases where the treating had taken place within a period of *six* months either previous or subsequent to the election; but this *proviso* was rejected by 153 to 78. See 109 Journals, p. 448.

(b) *Post*, p. 139.

(c) Lord J. Russell, 100 Hans. 1154.

(d) Mr. Henley, *ib.*

to define the proper limits of treating. A similar view was taken in the House of Lords in the session of 1852; and it was on that occasion contended by several noble lords, that there was no legal definition of treating, and that there were forms of it entirely innocuous. During the discussion on the North Cheshire case, before alluded to, Sir R. Peel is reported to have said, "As to the distribution of 2s. 6d. tickets, he ventured to say that before the enactment of the 5 & 6 Vict. c. 102, s. 22, the same question which then agitated the House would equally have arisen, namely, the question whether it be rational to admit this moderate degree of treating or no, a question and a difficulty which had been engendered and left unsettled by the state of the law, as it existed for 150 years."

If a strict interpretation of the statutes as to what constituted treating, was to be sought for in the decisions of committees, and in the expression of opinion by individual members of the Legislature, there might be considerable difficulty in defining what it was. There must ever be a great variety of opinions among the many members of either House. Some have openly declared, that they think the distribution of a moderate amount of liquor and other entertainments at elections, a thing rather to be approved of than blamed. And in estimating the value of the conflicting decisions of committees, it is necessary to bear in mind what are the functions which they have to discharge. A committee act as judges of the law as well as of the fact; and it is seldom possible to ascertain whether they consider the facts not sufficiently proved to establish the guilt of the parties, or whether they consider the facts proved as not coming within the law.

The recent statute may be said to define treating, as the corrupt giving by a candidate, or his agent, of meat, drink, or entertainment before, during, or after an election, in order that the candidate may be elected, or in order that the votes of the persons receiving the entertainment may be thereby influenced, or in order that the votes of some other persons should be thereby influenced.

In order to become liable to the pecuniary penalty, the candidate must either himself authorise the entertainment, or be accessory to it, or give it a subsequent sanction by paying for the whole or some part of the expenses incurred in such treating. Whether the seat of a member may not be avoided by the illegal acts of an agent, done without his knowledge or sanction, is another question, which will be considered afterwards in the section, "what corrupt acts will avoid an election."

It will be seen that the new statute speaks of a candidate "corruptly giving" meat, &c., and of his doing so "for the purpose of corruptly influencing persons with regard to their votes." It is proposed, therefore, to consider what acts will be deemed corrupt, and what will be the evidence of a corrupt intention.

In the *first* place, as to what acts are corrupt, the statute prohibits the giving of *any* meat, &c., whatever the amount may be, if it be given to the voters in order to influence their votes. As yet, no judicial interpretation has been put upon this section; but several cases have come before the Courts of law, in which questions have been raised as to the liability of candidates to pay for refreshments ordered by themselves or their agents. These cases, however, have in general turned upon the point whether the credit was

given to the candidate, or to some person unconnected with him, and it has not been necessary to decide what acts were corrupt. In one case, *Ribbons v. Crickett* (a), where an innkeeper brought an action to recover the amount of a bill for provisions furnished to voters at the request of the candidates, the Court, in deciding that the action could not be maintained, stated their view of what acts would be illegal. Eyre, C. J. "This action is apparently founded on a contract to disobey the law, being to provide entertainment for voters during an election. The contract is bottomed in *malum prohibitum*, of a very serious nature in the opinion of the Legislature, as appears by the preamble of 7 & 8 Wm. 3, c. 4; how then can we enforce a contract to do that very thing which is so much reprobated by the act? I am perfectly aware that great difficulties may arise from construing this act rigidly, but perhaps *still greater* will arise if it be not so construed. It is true that a voter who comes from a distance may have reason to complain, if he is not provided with necessaries; but it is also obvious that if the candidate can supply him, he may supply himself. If any exception is to be allowed for voters not resident, the whole mischief complained of in the act will necessarily follow. It will be impossible for the candidate to make a distinction between those voters who reside at a distance, and those who live within half a mile of the place of voting. The Legislature has drawn a strict line which is not to be departed from; it says, that after the *teste* of the writ no meat or drink shall be given to the voters by the candidate; and that

(a) 1 Bos. & Pul. 264.

being the case, this Court cannot give any assistance to the plaintiff, consistently with the principles which have governed the Courts of justice at all times, and with the cases which have been cited this day. Persons who engage in this kind of transactions must not bring their case before a Court of law."

Were a penal action to be brought against a candidate for corruptly supplying electors with provisions, in order thereby to influence their votes, a jury would probably be told, that the amount of refreshment given to each elector was immaterial, for the statute has prohibited the giving of any refreshment. It is clearly impossible to draw a line, and say how much meat and drink may be allowed to be given without infringing the law. A pint of beer may have as strong an influence on the vote of one man as a gallon upon another. When a statute prohibits any refreshment to be given, it cannot possibly sanction the giving of any quantity. An opinion, however, has prevailed that the distribution of 2s. 6d. tickets, or small amounts of refreshment, is not a violation of the law.

Such a view of the law is entirely at variance with the opinion of the Court of Common Pleas in the case of *Ribbans v. Orickett* (a), before cited. In the later case of *Hughes v. Marshall* (b), Lord Lyndhurst, C. B., in delivering the judgment of the Court of Exchequer, that an innkeeper might recover the cost of provisions supplied to voters, which had not been ordered by the candidate, or by any one acting for him, but were supplied at the request of, and on the individual

(a) 1 Bos. & Pull. 264.

(b) 2 Cro. & Jer. 118.

credit of the defendant, proceeded afterwards to consider whether there was any evidence that the treating there disclosed, though not falling within the statute of Wm. 3, might nevertheless amount to bribery at common law: and he there observes, "It does not appear that the parties to whom these refreshments were furnished had not previously voted; in the next place, it does not appear whether they resided in the town, or came from a distance, which might make it requisite for them to have moderate refreshment. It is to be remarked also, that the expenses are inconsiderable when compared with the number of persons who shared the refreshments. There is nothing, therefore, to shew that *bribery* took place to influence the election." It must be remembered, that the learned judge does not say that in a case under the statute it would have been necessary to shew that the parties had not voted, or that they resided in the place, or that the refreshments were extravagant. The court had already decided that the case was not within the Treating Act, as the candidate was in no way, directly or indirectly, connected with the ordering of the entertainments, and then the court proceeded to consider whether there was any evidence of the transaction having amounted to bribery at common law. According to the state of the law with regard to bribery when this case was decided, gifts after an election, without a precedent promise, did not amount to bribery.

The opinion, therefore, recently expressed in both Houses of the Legislature, that there is a description of treating not forbidden by statute, and that moderate refreshment may be given to voters coming from

a distance, is quite at variance with the opinion of the Court of Common Pleas in the case of *Ribbans v. Crickett*, and is certainly not supported by what fell from the Court of Exchequer in the case of *Hughes v. Marshall*.

As has been already observed, it is not easy to determine what has been the view of election committees on this matter, for it is seldom possible to extricate the judgment on the law from the verdict on the facts.

In the *Herefordshire case*, 1 Peck. 184, it was admitted by the counsel for the sitting members, "that the smallness of the sum, or of the entertainment given, is a circumstance of no importance as to the crime, provided they had the effect of influencing the election, or were given with a corrupt intent" (a).

In the *Middlesex case*, 2 Peck. 32, the charge of treating was held to be established, although "the entertainment afforded to the voters was not proved to have been by any means extravagant, nor was it at all charged, or insinuated, that it was given them for the purpose of influencing their votes, or for any other purpose, than merely for their necessary refreshment." In this case the committee took the same view of the statute as the Court of Common Pleas in the case of *Ribbans v. Crickett*.

The smallness of the amount of refreshment given is in general brought forward to show that the conduct of the candidate or his agents could not have been

(a) It was said that the sum paid being divided among the number of voters entertained, left about 9d. for each man; 1 Peck. 197.

corrupt, or for the purpose of corruptly influencing voters. The defence of the system of giving dinners, or 2s. 6d. tickets to voters on the day of election after they have voted, has usually been rested on this ground. It is said, how absurd to suppose that a voter can be influenced by a dinner given after he has voted.

This leads to the *second* point for consideration, what evidence will be required of the act having been done *in order to be elected*, or for the *purpose of influencing the voter or other person*, and it is probably the most important question connected with the law of treating. The words, "in order to be elected," are the same as those used in 7 Wm. 3, c. 4; and in the cases of *Ribbans v. Orickett* and *Hughes v. Marshall*, it appears that the court in each case did not consider it necessary to shew any corrupt intention towards the voters. Lord Lyndhurst, in the latter case, points out the distinction, "if the provisions were furnished with a view to influence the election, such conduct would be illegal at common law, and no action would be maintainable. If bribery is brought home to the party, he is guilty of an offence at common law, and can maintain no action."

In the *Herefordshire case* (a) already cited, the whole question was very fully and ably argued. It was contended for the sitting member, "that the Legislature had distinctly pointed to the guilty purpose and intention of the offender as a constituent part of the crime; and that he must have committed it in order to be elected; so that the intention was essential to

(a) 1 Peck, 184.

the offence, and must be proved. That the statute was passed to prevent bribery by treating—that where the amount of entertainment given was small, and could not bias the voters, it was not reasonable to suppose it was given for a corrupt purpose—that the tickets given at the election in question could not have been given in order to influence the votes, because they had been given by all the candidates, agreeably to a plan previously concerted between them.” On the other hand, it was argued on behalf of the petitioners that, “An act wilfully committed against the law, is of itself sufficient evidence of an intention to break the law; that where any act is *malum prohibitum* the intent to do that act, is an unlawful intent, and it is no answer for a man to say he did not intend the mischief against which the law has endeavoured to guard. That the giving anything to a voter during an election was forbidden; but, that the gift of money to a physician, a manufacturer, or an object of charity, or entertainment to a friend, who happens to be also an elector, is not criminal, because it is not given to them *as voters*, but as persons standing in other relative situations to the giver—that it was not pretended in that case, that the persons who received the money and provisions received them in any other character than as voters—that the argument that the acts could not have been done in order to be elected, because all the candidates did the same, was an extraordinary one to excuse a crime—that no doubt all of them did it, but they all of them did it “in order to be elected”—that as to the smallness of the sums given, the maxim *de minimis non*

curat lex, was never before applied to a crime, or to an act of disobedience to the law." The committee adopted the view contended for by the petitioners, and avoided the election.

In the *Middlesex case (a)*, the provisions were distributed to voters at an inn by the orders of the agents of the candidate, other persons also agents undertook to pay for these refreshments. The entertainment was not by any means extravagant, and it was not charged or even insinuated that it was given to the voters for the purpose of influencing their votes, or for any other purpose, than merely for their necessary refreshment; the counsel for the candidate, thus implicated by the conduct of his agents, considered the charge so clearly made out, that he declined to address the committee in his defence. It does not appear that there was any evidence to affect the candidate personally, but the committee reported, that W. M. did by his agents commit acts of treating, whereby he was incapacitated to serve upon such election.

There are several reported cases, where committees have refused to avoid the election, although there has been evidence given of the distribution of meat and drink to the electors. It is impossible to ascertain from the finding "that the sitting member was duly elected," whether the committee disbelieved the evidence, or thought there was no sufficient proof of agency, or took a merciful view from feelings of commiseration, or whether they were of opinion that the

(a) 2 Peck. 31.

entertainment, though given in contravention of the statute, was not done with a *corrupt* intention (a).

In a recent case, *New Windsor*, 1853, the committee reported "that Lord C. W. was duly elected"—"that treating to a considerable extent appeared to have existed at the last election, but that such treating was *not proved* to have taken place for the purpose of corruptly influencing voters, or to have been by the order or with the sanction of Lord C. W. or his agents."

If the treating was not proved to have been ordered, or sanctioned by the sitting member or his agents, there can be no doubt that the committee were right in upholding the election. The former part of the resolution, that there was no proof of a corrupt purpose seems to proceed on an incorrect view of the law. It is submitted that the view taken by the counsel for the petitioners in the *Herefordshire* case, is the correct one. The intention to corruptly influence voters is evidenced by the giving of the entertainments. In this very case of *New Windsor*, the agent of the sitting member stated the object of certain meetings at public houses, where drink was given away, to be, "to *counteract* the large meetings that the other parties were holding at public houses, and to ascertain the feelings of the different voters" (b). The existence of improper practices on behalf of one party at an election, constantly begets similar conduct

(a) *Radnorshire*, 1 Peck. 494; *Shaftesbury*, F. & F. 376; *Chester*, C. & D. 68; *Wigan*, B. & Arn. 788.

(b) Printed Minutes, p. 112.

on the other side, in order to counteract the influence already produced upon the voters ; but a practice does not become legal or cease to be corrupt, because all the parties concur in setting the law at defiance; *Herefordshire*, 1 Peck. 184; *Bremridge v. Campbell*, 5 C. & P. 186.

In another recent case, *Dungarvan*, 1854, the committee reported, "That it was proved that a supper given after the election of 1852, on the evening of the day of polling, was ordered by the agents of Mr. M. previous to the polling, and afterwards paid for by *him*, and of which several of the persons who voted for Mr. M. partook"—"that it did not appear to the committee that this supper was given for the purpose of corruptly influencing or corruptly rewarding any voter or other person (a)." The statutes, which the committee were then interpreting, forbade the candidate to pay for any provisions given to voters before, during, or after an election. The time, therefore, at which the supper took place was immaterial. But was it given to influence their votes, or rather was it given corruptly to reward them and for being elected? With what other object could such a supper have been given? The occasion of it was the election, the recipients were the voters who had just supported Mr. M. It is impossible to give any direct proof of the corrupt intention in treating. It is not like the case of bribery at common law, where a contract or understanding takes place between the voter and the candidate, but it resembles rather that statutable

(a) *Printed Minutes, post.*

bribery already described (a) where the giving of rewards after an election is prohibited on account of its corrupt tendency. The corrupt intention exists in the disobeying the statute. If a candidate gives money to an elector after an election, because such elector has voted for him or refrained to vote for his opponent, he gives corruptly; so also if a candidate gives an entertainment to his supporters at an election after the election, because they are his supporters, the act itself of giving the entertainment is a corrupt act, and it is impossible that a corrupt act can be done without a corrupt intention. In neither of the cases here put, is it necessary to shew that there was any previous bargaining for the vote, or that it was made known to the voter, that money or entertainment would be given after the election. Whenever such is the case, the transaction amounts to one of bribery at common law, and falls within the *second* section of the new act (b).

The 7 Wm. 3, c. 4, prohibited a candidate from giving entertainment to any person having voice in the election; the 5 & 6 Vict. c. 102, s. 22, forbade the giving meat, &c., to any person for the purpose of influencing or rewarding *such* person, or *any other* person for his conduct with regard to his vote. Under this latter section the giving of entertainment to the family of an elector, or to a non-elect, as

(a) *Ante*, p. 91.

(b) *Ante*, p. 78. The distinction pointed out by Mr. Rogers in his work on Elections, p. 261, between bribery and treating, is not now an accurate one, because "Parliamentary bribery" does not necessarily assume the existence of a contract expressed or implied. *Durham*, B. & Arn. 201, *Liverpool*, 1853, *ante*, 87; and 17 & 18 Vict. c. 102, s. 2.

a reward on account of the mode in which the elector had exercised his franchise, amounted to corrupt treating. The Corrupt Practices Prevention Act, uses the same language as the 5 & 6 Vict. c. 102, s. 22; and every candidate who shall give entertainment to any person, in order to influence or reward such person who receives the entertainment, or any other voter through him, will be guilty of corrupt treating.

The *penalty* now for the first time imposed upon treating is a pecuniary one only; a person found guilty of treating in a penal action, will forfeit the sum of *fifty* pounds besides costs of suit. The only person who can be so sued is the candidate who has given the entertainment; or been accessory to it, or sanctioned it by afterwards paying for it. *Omnis ratihabitio retrotrahitur, et mandato æquiparatur*. Unless the candidate has participated in the illegal transaction in one of the modes here described, he cannot forfeit the penalty: Whether he may not be unseated, or disqualified by the unlawful acts of others, is another question which will have to be considered hereafter.

The whole question of treating, would have been placed upon a very intelligible and satisfactory footing, if the legislation on this subject had stopped here. If the question had again been asked, what is treating? The answer would have been, "It is the giving of *any* entertainment to voters, or to others on their account, in order to influence, or to reward the voters in respect of their votes at the election."

If this be a correct definition of treating, the offence would be complete, at whatever period of the election the entertainment was given to the voters, and what-

ever the amount of it might have been ; and whenever such entertainment was given for no other reason than, that the persons who partook of it were electors, and that the time of giving it was election time, the intention to influence or reward would be incontrovertible ; it would amount to *presumptio juris et de jure*.

A section, however, which was inserted into the "Corrupt Practices Prevention Act," shortly before it left the House of Commons, has thrown the whole law on the subject into confusion. This section, which is so inconsistent with the rest of this statute, and with all recent legislation with regard to corrupt practices at elections, seems to have been the result of a compromise between the different parties advocating and opposing the bill towards the close of the session.

The section is the 23rd, and is as follows :—

"And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law : Be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, *on account* of such voter having polled or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed *an illegal act*, and the person so offending shall forfeit the sum of *forty shillings* for each offence, to any person who shall sue for the same, together with full costs of suit."

It is difficult to discover how the doubts mentioned in the preamble to this section could have arisen.

From the year 1696 down to the present time it has always been illegal for a candidate, on any day subsequent to the *teste* of the writ, to give any entertainment to voters on account of their having polled or being about to poll; and since the year 1842, the period during which treating became illegal, has been extended. Can it be seriously contended, that the giving entertainment to a voter a quarter of an hour before he goes to the poll is less corrupt, and less likely to influence his feelings towards the party treating him, than if such entertainment had been given ten days before? Such, however, seems to be the view taken by the Legislature when sanctioning the introduction of this clause into the act.

So long as this 23rd section continues to be law, the giving of entertainment *or money* to procure refreshment to voters on the days of nomination and polling, on account of their having voted or being about to vote, is to be deemed an *illegal act*, and something different from bribery or treating. The pecuniary penalty on so entertaining a voter on any day prior to the nomination day, or subsequent to the polling day, is *fifty pounds*, but on these two excepted days a penalty of *forty shillings* only is incurred. The penalty is for each offence, so that if many persons were so entertained the penalty might mount up to a much larger amount; but there can be no doubt that it was intended to look upon the giving of refreshment to voters on the nomination and polling days as a more venial offence than treating in general. If that be so, and if it is to continue the law of the land, there can be no doubt that the whole of the view taken of treating in these pages is altogether incorrect; for is it im-

possible that any one could seriously say that it was less corrupt to give a breakfast or a dinner to voters on the polling day than on any other day.

From the manner in which this section is drawn, not only a candidate, but also any other person, who gave a breakfast to his friends or labourers on these days, for this reason that they had voted, or were about to vote, would be liable to the penalty. This can hardly have been intended; heretofore only *candidates* have been prohibited from entertaining voters, as voters, at an election. The 7 Wm. 3, c. 4, spoke of "persons to be elected," which was held to include unsuccessful candidates. The act of 1842 spoke of "candidates or persons elected only." The *fourth* section of the new act, in defining treating, refers only to the acts of a candidate at an election (the word candidate including of course in all these cases those other persons who act on his behalf); but in this 23rd section the words are quite general, "the person so offending," that is, the person giving entertainment on the polling or nomination days to voters, is to forfeit 40s. The only way of construing this section consistently with the other sections and the general state of the law on this subject, would be by supposing that the Legislature was not referring to the acts of candidates at all, but was intending to prohibit every partizan at an election from entertaining his friends on account of their being about to support, or having supported the side with which he was connected. But it is not probable that such could have been the intention; 1st, because the section says in general terms in the preamble, that doubts had arisen whether "the giving of refreshment" to voters on these two

days was illegal or not, and no one but the candidate was ever before prohibited from entertaining voters; 2nd, because it would be unreasonable to forbid a landlord or a master unconnected with the candidate, to give entertainment to his tenants or servants, as the case might be, as a refreshment to them before or after polling; and, 3rd, because it is apparent, from what took place in Parliament, that it was not the intention of the Legislature to forbid others than candidates from entertaining voters. The whole history of the clause is rather curious.

On the 22nd of July it was proposed to insert the following clause in the bill :—

“ And whereas doubts have arisen as to whether the payment of the expenses of conveying voters to and from the poll, *as also the giving of refreshment to voters on the day of nomination or day of polling*, be or be not according to law, and it is expedient that such doubts should be removed, and that the law should be settled in these particulars; be it declared and enacted, that from and after the passing of this act, it shall be lawful for any candidate or other person, subject always to the provisions of this act as to the payment of election expenses to pay or cause to be paid the actual and reasonable expense of bringing any voters to the poll.”

The words from poll to polling, those printed in italics, were then upon motion omitted from the clause, and the rest of the clause passed the House of Commons in this shape, but was rejected in the House of Lords, as has been stated before (a). Another clause

(a) *Ante*, p. 84.

was afterwards proposed on the same day, declaring "that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled, or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, should be held and be taken to amount to *bribery* or *treating* as the case may be." This clause was at the time withdrawn. It will be seen that it is nearly similar to the 23rd section, except that it declared the acts to amount to treating or bribery, and in the 23rd section they are described simply as illegal acts. On the 24th July the following clause was proposed :—

"And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed; be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, *on account* of such voter having polled, or being about to poll, any meat, drink, or entertainment by way of refreshment, or *any money* or ticket to enable such voter to obtain refreshment, shall be held and be taken to amount to *bribery* or *treating*, as the case may be within the meaning of this act."

A long discussion ensued upon this clause. It was read a second time, after a division of seventy-seven against thirty-five. It was then proposed to limit the operation of the clause, by inserting after the word "refreshment," the words "not being refreshment reasonably incidental to the travelling expenses of

such voter." This amendment was negatived by one hundred and thirteen to sixty-one; but before the clause was added to the bill it was unfortunately agreed to leave out the words "shall be held and be taken to amount to bribery or treating, as the case may be, within the meaning of this act," and to insert in lieu thereof, "shall be deemed an illegal act, and the person so offending shall forfeit the sum of 40*s.* for each offence to any person who shall sue for the same, together with full costs of suit." In this form the clause was added to the bill (*a*).

Whether this clause was allowed to be so framed without due consideration of the effect it would have upon the law with regard to bribery and treating, or whether it was in the nature of a compromise, in order to put an end to discussion at that late period of the session, it is difficult to say. It must be remembered, however, that a great difference of opinion existed in the House upon this question of allowing moderate refreshments to voters at elections. On the 20th of July a clause was proposed to allow the election auditor, if all the candidates should consent thereto, to issue 2*s.* 6*d.* tickets to each voter on his having polled, which tickets were to be paid or discharged in money or refreshments by any person willing to take such tickets. After considerable discussion the House divided, and the clause was rejected by a small majority, the numbers being 142, and 126. Possibly the adoption of this clause would have proved less mischievous, and introduced less confusion into well established principles of law than the 23rd

(*a*) See 109 Journals, 428, 430, 435.

ion as it stands at present. The allowance of 5d. tickets to voters would have been at variance with the *Herefordshire case*, 1 Peck. 184; the *Ilchester*, 1 Peck. 304; *Middlesex*, 2 Peck. 31; *2nd Chelmsford*, 1848. There would, however, have been a defined limit to the exceptional illegality sanctioned by the Legislature.

As the law stands, a candidate determined to set law at defiance, and to whom two or three hundred penalties are a matter of little importance, might fully abstain from expending anything until the day of the nomination day. On that day, and on the following polling day, breakfasts and dinners would be abundantly provided for voters. Such conduct would be perfectly legal; but the candidate would hope not to imperil his election, because the act says, that such things done on these two days on account of a voter having been invited, or being about to poll, should amount only to an illegal act.

It is impossible but that election committees will find considerable difficulty in construing the fourth and twenty-third sections of this new act, with reference to the question of when an election shall be avoided on the ground of treating.

Unless the entertainment given by a candidate on election days is to be deemed treating, he will not thereby be disqualified. Disqualification for Parliament, arising from the commission of illegal acts, arises only when a candidate being declared guilty of bribery, treating, or undue influence. Other illegal acts, though they entail pecuniary penalties, will not render the candidate incapable to serve in Parliament (a).

(a) The difficulty arising from the non-repeal of the
H

Suppose two candidates, each to expend fifty pounds at the election in entertaining voters, one of them on the polling day only, and the other on a day antecedent to the nomination day, could the former be declared capable of sitting and the latter ineligible?

There can be little doubt that in a court of law each would be considered equally guilty of treating, and therefore subject to the penalty of fifty pounds. Should this clause remain long unrepealed, there may probably be some judicial interpretation of the two sections. As it is, it can hardly fail of seriously embarrassing committees desirous of honestly carrying out the law, and of putting an end to all extravagance and corruption at elections.

When cases of treating are inquired into by a committee of the House of Commons, if the acts charged are not those of the candidate himself, the agency of the guilty parties must be proved before any evidence can be received of the acts themselves. It has been uniformly held that the 4 & 5 Vict. c. 57, which so much facilitates the proof of charges of bribery, does not apply to cases of treating.

In the *Cambridge case*, B. & Arn. 184, a resolution was come to on the subject. *Resolved—*

“1. That the stat. 4 & 5 Vict. c. 57, cannot be taken to apply to treating, unless such treating can be shown to have influenced some particular vote.

“2. That counsel must not go into evidence as to acts of treating, which cannot be shown to have influenced some particular vote, unless such acts are

35 Geo. 3, c. 29, s. 19, with regard to the distribution of cockades, &c. at Irish elections has been pointed out, *ante*, p. 116.

arged to have been committed by parties previously
own to be agents of the sitting member, *except*
re the evidence which is intended to prove the
ating cannot be separated from that which is in-
ded to prove the agency."

The question of agency in cases of treating is
erned by precisely the same principles as it is in
es of bribery, or undue influence. Whenever a
didate has so far entrusted the affairs of his elec-
n into the hands of another person, as to become
ponsible for acts of bribery committed by such
son, he will be equally responsible for any acts of
ating or undue influence that may be committed
him. The inquiry therefore into the principles,
ich govern election agency will be postponed until
er the consideration of the remaining species
corrupt practices, *viz.* "undue influence at elec-
ns."

2. *Undue Influence.*

For a long time it has been matter of regret, that
sufficient means existed for punishing divers mis-
chievous practices, which interfered materially with
e proper freedom of elections. Voters were often
ducted, or carried away, sometimes by force, some-
mes by stratagem. A practice has been often
orted to of *cooping* voters, that is to say, locking
em up in a house, and so barricading the entrances,
at their friends were unable to obtain access to them.
Many voters have often been deterred by threats of

personal violence, or loss of custom from voting, or were, by the same means, compelled to vote against their real inclination and conviction for some other candidate. When cases of this description were mentioned in election petitions, they were inquired into, and were occasionally specially mentioned in the reports of the committee to the House. The validity of the elections, however, were not affected by them, unless, indeed, such a number of voters had been carried away as would have turned the scale against the sitting member. Thus in the *Cockermouth case*, 1853, Print. Min. 147, the committee reported the sitting member to be duly elected, but they at the same time specially reported "That Mr. R. B., the *accredited general agent of Mr. A.*, the sitting member, was a party to the removal to the house of a relative, of a voter who had promised to vote for General W., with a view of preventing the said voter from voting as he had intended." Two other cases of "undue influence" were also reported by the same committee as having taken place without the sanction or privity of the sitting member or his agents.

Such conduct on one side almost invariably leads to retaliation on the other, and a struggle then takes place as to which side will be the cleverest in kidnapping the voters of the other. In order to remedy this mischief, another practice equally pernicious was called into existence. Bands of men were employed as watchmen to guard voters; these men were quartered all over the place, in different public houses; and a most liberal allowance of meat and drink was constantly supplied to them. This latter practice occasioned a twofold evil—bribery towards the pub-

in, in whose house the voters were placed, and in-
criminate treating of the electors. Often ten or
twenty of these guards, or roughs, or fighting men, as
they were called, were quartered in a public house as
consideration for the support of the publican. It
is very difficult in such a case to trace the corrupt
gain, but the result was obvious—it secured the
vote of the publican. Again, as a cloak to treating
electors: orders were loudly given by agents, &c., that
not only these roughs, or non-electors should receive
food and drink, but the taproom was open to all, the
landlord did not take any great pains to ascertain the
character of the persons entering his house, and in
this way a vast amount of corrupt treating has taken
place at elections, and too often with impunity. Many
committees have of late perceived the mischief arising
from this employment of “protectors,” and have
made reports on the subject. Thus, in the *New
Windsor case*, 1853 (a), the committee reported, *inter
alia*, “That a practice appears to have prevailed at
recent elections for the said borough of hiring, and
employing large bodies of men for the purpose of
protecting voters and preserving order: the committee
are of opinion, that such a practice leads to the in-
curring of excessive and exorbitant expense, and is,
on other grounds, demoralising and pernicious; but
they are also of opinion, that this evil has been mainly
caused by the insufficiency of the arrangements made
for recent elections for the said borough, and by the
inadequacy of the police” (b).

(a) Printed Minutes, vi.

(b) Upon this report to the House, a petition was pre-

The employment of such bands of men constantly creates disturbance instead of supplying the inadequacy of the police force in the place. Whenever the police force is not sufficient, the returning officer is bound to swear in special constables to keep the peace. In the 1st *Clitheroe* (1853) (a), the committee reported, "That violent and tumultuous proceedings appear to have taken place at the said election, and that *hired* bands of men, armed with sticks and bludgeons, were introduced into the said borough for purposes of undue influence and intimidation." Another instance of the same sort of conduct is pointed out in the report in the *Bewdley case* (1848) (b), "That it was proved before the committee, that a practice prevailed at the borough of *Bewdley*, in the last election, as well as in that of 1841, of carrying away and treating electors, and that in consequence of this system large bodies of men were employed on both sides for the alleged protection of voters; that *almost every* public house and beer house in the borough was kept open during the week of the election, and drink given away to a large extent."

Another species of undue influence, which has for a long time seriously interfered with the freedom of

mented by a justice of the borough, complaining of the statement that the police was inadequate; and that he had not been permitted to be examined before the committee to contradict the statements on that subject, on account of his having been in the room. In this petition he alleges that a force of sixty additional constables had been sworn in to protect the borough from these "protectors." See 108 Journals, p. 360.

(a) 2 P. R. & D. 30.

(b) 1 P. R. & D. 76.

tions, is that arising from actual violence, and acts of violence to voters. It has been pointed out where (a) that committees have of late been very reluctant to avoid elections, where such malpractices are taken place, unless it could be *proved* that the result of the election was affected by them; but how is this to be proved? The difficulty of proving what might have happened, if something else had not taken place, has led to this, that in all modern cases, when an election has been complained of, the election has been maintained. Thus, in the *Rosburgh case* (b), where riotous riots took place, and many voters were ill used on account of the way they had voted, and others were threatened, and thereupon refrained from voting, the committee upheld the election, although they reported to the House the existence of riotous and tumultuous proceedings at the election. In the *Cork case* (c), 1842, great violence was used towards the voters on one side at the election. A motion was made in the committee, that "The system of outrage and violence of such a nature at the last election for the county of *Cork*, as to be calculated to strike terror into the minds of the electors of that county, and to destroy the freedom of election." This motion was negatived by four to three, and the sitting members were declared duly elected. In the case of the *Cork county* (1853) (d), the committee resolved, "That the evidence adduced before the committee shows that, during the last election for the county of

(a) Rogers on Elections, 240; Clerk on Com. 87.

(b) F. & F. 467.

(c) B. & Aust. 534.

(d) Printed Minutes.

the city of *Cork*, riotous and tumultuous proceedings took place in the said city, and that serious outrages and assaults were committed on the persons and property of several electors and others:—"that intimidation was exercised upon, and threats used towards several voters for the purpose of influencing their votes." The sitting members, however, were declared duly elected.—See also *Clare county* (1853) (a).

In addition to this more common description of violence to the persons and properties of voters, another kind of undue influence, of a very disgraceful character, has been extensively resorted to in *Ireland*. The Roman catholic priests in that country have been too much in the habit of acting as political partizans at elections, and have on many occasions inflamed the minds of the mob by appeals to their religious fanaticism, while at the same time they have deterred many of the more timid members of their congregations from voting according to their consciences, by threatening to withhold from them the benefit of absolution if they voted for Protestant candidates.

In the *Cork County case* (1842) (b), the petition alleged, "That at various Roman Catholic places of worship, the most inflammatory addresses were delivered from the altar to voters of that persuasion, wherein the Protestant candidates and their partizans and supporters, were denounced as the enemies of religion, and Orangemen thirsting for the blood of their countrymen, that by these and similar means, a violent animosity was kindled amongst the lowest and least educated classes in the county against the Pro-

(a) Printed Minutes.

(b) B. & Aust. 534.

ant candidates." No evidence, it is true, was
 en in support of these allegations in the petition,
 it is to be feared that they represent what has too
 n occurred of late years at *Irish* elections.

n the *Mayo case* (1853) (a), it was proved that the
 nan Catholic priests had taken a very active part
 he election; that in fact the conduct of the election
 been in great measure placed in their hands by
 sitting members; that a most inflammatory placard
 been placed upon the doors of the chapel of the
 nan Catholic Archdeacon on a Sunday (b). The
 mittee reported, "That it appears from evidence
 n before the committee, that there was great abuse
 spiritual influence on the part of a great body of the
 nan Catholic priesthood during the last election for
 county of *Mayo*:" but they declared the sitting
 bers to be duly elected. In this case it appeared,
 about fourteen days before the election the two
 ng members had signed the following paper.

Castlebar, July 9, 1852.

The undersigned candidates for the represen-
 tion of this county, relying on the popular strength
 and the popular will for success, and satisfied that
 o other influence should be permitted to control
 he event of the election, do mutually agree that a
 mittee shall be appointed by the Mayo Inde-
 pendent Club of this county, as at present consti-

a) Printed Minutes.

b) One portion of this placard was as follows. "Catholics
 Ireland! whoever votes for a supporter of Lord Derby's
 ernment, votes for the massacre of his countrymen, the
 ation of the House of God, and the pollution of the body
 blood of his Redeemer!" *Mins.* p. 52.

"tuted; that this committee shall consist of Catholic clergymen, and such other gentlemen belonging to the popular party, as it may be judged fit to add to their number. And the undersigned mutually bind themselves to abide by the decision of that body, as to their joint or separate claims upon the representation of this county, and at any period of the election to carry out the views of the committee, either by resignation or otherwise, as it may believe to be for the interest of the popular cause. That the day of nomination be appointed for the naming of this committee, at whatever hour may be deemed most convenient.

"Signed G. H. M. } Candidates.
 "O. H. }
 "P. C., p. p., Chairman."

The committee was never appointed; but it was proved that this "Independent Club" carried on the business of the election. Were a case similar to this of *Mayo*, to be now brought before a committee, they would be bound to avoid the election.

In the *Sligo case* (1853) the election was avoided on account of bribery and treating; but the committee at the same time reported, "That the influence of the Roman Catholic priests was exercised in a manner inconsistent with their duty as ministers of religion, and destructive of freedom of choice on the part of the voters."

Such are a few examples of the evils which the *fifth* section of the new act is intended to remedy. And it defines "Undue Influence" thus:—

"Every person who shall, directly or indirectly, by himself, or by any other person on his behalf,

make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of *fifty* pounds to any person who shall sue for the same, together with full costs of suit."

The use of actual force towards electors was always indictable as an assault: but now the *threat* of violence of any kind towards a voter, in order to influence his vote is indictable and punishable in a penal action. In whatever manner the threatened injury is to reach the voter, the penalties will be incurred; and not only the use or threats of personal violence be so punished, but also every threat of inflicting any kind of pecuniary loss, or any species of injury in order to influence the voter. The practice of carrying away voters either by open force, or by stratagem, will now be attended with serious consequences. The act for-

bids the use of every description of fraudulent device or contrivance whereby voters are hindered in the free exercise of their franchise. Were a voter, known to be a determined partizan of one side, to be reduced by the devices of the other side to such a state of intoxication as to be unable to poll, would this be a case of undue influence within the statute? Probably, if any device were made use of to make the man drunk, it would be so; without this it might be said *volenti non fit injuria*.

The abduction of voters, whether done with force or by stratagem, as in the *Cockermouth case* before cited, where the voter was taken away in a state of intoxication, will be equally criminal. Some care will be necessary in the application of this part of the section, as well in regard to its criminal or penal consequences, as in a parliamentary investigation into the validity of an election. It will be necessary to distinguish between those cases where voters are decoyed away, or dragged away half consenting, and those where the voters voluntarily leave the place of election in order to avoid the importunity of persons who have influence over them, and take refuge in the house of a friend until they can come to the poll without molestation. This is, no doubt, the common excuse made in all cases where voters have been carried off, and afterwards *cooped*, or secreted; at the same time, whenever the practice of "kidnapping" voters has begun, or there has been an unfair use of influence by persons in authority upon the minds of the voters, this system of hiding until the hour of polling becomes excusable. It will be the duty of juries and of election committees to examine carefully

to the matter, and determine the real character of each case.

The penalty.] The act imposes serious penalties on all persons hereafter infringing its provisions. The offence of undue influence is a misdemeanor, punishable with fine and imprisonment, and every person guilty of it is also liable to forfeit fifty pounds a penal action to any one who shall sue for it.

Moreover, every person convicted of undue influence by a jury, or sentenced to pay the penal sum on an action brought against him for such offence, will be liable to have his name excluded from every register of voters, and to be placed in a separate list to be entitled "The list of persons disqualified for bribery, treating and undue influence." This list will be printed and published along with the register for the purpose for which the person so offending had or claimed to have a right to vote. Sect. 6.

The consequences to a candidate having recourse to such practices, so far as the validity of his election and his subsequent eligibility are concerned, will be the same as in cases of bribery and treating. The candidate will in this respect suffer not only for his own acts, and for those of others to which he was accessory, but also for the acts of all such persons as by the law of Parliament will be deemed his agents.

4. *What Corrupt Acts avoid an Election.*

The penalties attendant upon the commission of corrupt practices have been already pointed out. Bribery and undue influence are indictable offences, and they also, as well as treating, may be made the subject-matter of penal actions. No person, however, will be subject to either the pecuniary penalties or the criminal consequences here imposed, unless he has himself engaged in the corrupt transactions, or authorised them, or subsequently sanctioned them. No man can be indicted for the act of another unless he has been accessory to it. The parliamentary consequences of corrupt practices, however, are widely different. When the inquiry is no longer as to the personal guilt of the party, but whether an election is a valid one or not, the responsibility for the acts of others becomes much more extended. The candidate then, in a certain sense, becomes responsible for the acts of agents done without his knowledge or authority. The inquiry, in these cases, is not so much into the personal guilt or innocence of the candidate as into the sufficiency and validity of the election. The principal inquiry, and therefore the chief finding of the committee, is, whether the election was a void one or not (a). It is true that, in modern practice, they

(a) In the *Hertford case*, P. & K. 553, the finding was that the election was void, and that bribery and treating prevailed previously to and during the last election. There was no allusion to the candidates at all. *Montgomery*, ib. 173; *Oxford*, ib. 58, and in many other cases no notice is taken in the report of the conduct of the member returned.

to go on to report whether the sitting member has been guilty by himself or his agents; and it is this mode of finding, probably, which has given rise to the complaint that a candidate is pronounced guilty of criminal acts, done by others, but of which he was entirely ignorant.

The extent of this responsibility is a matter of such great importance in election inquiries, that it is proposed to consider in detail the authorities on which it rests. The proposition to be established is this, that an election may be avoided, and a candidate may be rendered ineligible, by reason of the acts of other persons, unsanctioned by him. In cases of bribery this has been hardly ever disputed. The common practice, prior to the passing of the 4 & 5 Vict. c. 57, was for committees to report simply, "that A. B. was not duly elected," and sometimes they went on to state that by his agents he had been guilty of bribery or treating. This latter part of the finding was more frequently omitted. Since the passing of the statute last mentioned, committees have, in accordance with its requirements, reported separately and distinctly upon the facts of bribery proved, and also whether it had been proved that such bribery was committed with the knowledge and consent of the sitting member or candidate. This statute was a distinct recognition by the Legislature of the principle, that a candidate may be disqualified by acts of bribery committed without his knowledge or consent.

An attempt, however, has recently been made to limit the extent of this responsibility in cases of treating, and to confine it to those cases where the candidate knew of the treating at the time, or sanctioned it subsequently by paying for it. This has been

already adverted to in the section on "treating." It becomes necessary, therefore, to consider whether the words "by any other person on his behalf" have a different signification in the *fourth* section of the new act defining treating, from what they have in the *second*, which defines bribery.

The expression in the 7 Wm. 3, c. 4, was, "by himself, or by any other ways or means on his behalf;" that in the new statute is similar: "by himself, or by or with any person, or by any ways or means on his behalf." The meaning of the words "on his behalf," in the statute of Wm. 3, have been discussed in one or two cases before the courts of law. These cases are not much in point, for the question in all of them was, whether the plaintiff had given credit to the person sued or to some one else.

A case of *Smith v. Rose* (a) tried before Lord Kenyon, in 1789, is sometimes quoted, in which a publican recovered the amount of his bill for refreshments supplied to voters, in order to show that there is no illegality in acts done without the knowledge or consent of the candidate. But this case proves nothing, for there was no evidence that Mr. Rose, who was at the time secretary of the Treasury, was in any way agent for, or connected with Lord Hood, who was the candidate at the election: and the law has only forbidden candidates and their agents to treat electors. Another case which is frequently brought forward to show that the parliamentary rule with regard to election agency is inconsistent with the principles of the courts of law, is the case of

(a) Clifford, 103; 1 Peck. 205.

Hughes v. Marshall and others (a). The action was brought by an innkeeper against the defendants, who had been supporters of a candidate at an election, to recover the amount of refreshments supplied to voters at the election, upon the request of the defendants. The defence set up was, that the proceeding was illegal by reason of the Treating Act. Patteson, J., directed the jury "that the case could not be within Wm. 3, c. 4, unless they were satisfied that the defendants were proved to be the agents to, or identified with the candidate; and that if they were of opinion that the articles in question were supplied at request, and on the personal credit of the defendants they must find a verdict for the plaintiff." The jury accordingly found a verdict for the plaintiff. A rule nisi for a new trial was afterwards obtained. During the argument, Lord Lyndhurst, C. B., remarked: "That the words 'on his or their behalf' must be understood to comprehend only acts resorted to at the request, or with the knowledge of the candidate." Afterwards, when the rule was discharged, Lord Lyndhurst in delivering the judgment of the court said, "We are of opinion, that the rule in this case for a new trial should be discharged. One point is, whether the case fell within the provisions of the Treating Act, and we are of opinion on the evidence at the trial that it did not; and in that respect we agree with the learned judge who tried the cause. It is perfectly clear from the language of that statute, that no transaction falls within the provision of the act, unless the candidate or person to be elected has some share

(a) 2 C. & Jer. 118.

in the transaction. It is perfectly clear from the words of the statute, that, to bring a case within the above provision, the acts mentioned in the statute must be done by the candidate, that is, not by him *only*, but by him, *or* by some person acting for him and on his behalf. It appears to us that there is nothing in the evidence in the present case to affect the candidate; and indeed the question was put to the jury, whether the refreshments were supplied on the *credit* of the candidate, or on the individual credit of the defendants; and the jury found that they were supplied upon the credit of the defendants. We think, therefore, that this case is not within the provisions of the Treating Act." It will be seen that the decision in this case turned mainly upon the circumstance that there was *no* evidence at the trial to show that the defendants had been the agents of the candidate at the election; and further, that the articles had been supplied on their individual credit only. The expression that fell from the learned Chief Baron during the argument, that the words in the act "on his or their behalf" must be understood to comprehend only acts resorted to at the request, or with the knowledge of the candidates, is very much qualified by what is found on the same subject in the judgment of the court pronounced after deliberation. It is there said, that acts done by a person acting for and on behalf of the candidate are within the statute, and nothing is said about such acts being done at the request of, or with the knowledge of the candidate.

The case of *Thomas v. Edwards* (a), which is

(a) 2 M. & W. 215.

so occasionally referred to as a judicial interpretation of the law of election agency, has really no bearing upon the question. In that case an action was brought by the executor of an innkeeper against the chairman of the committee of a candidate, in order to recover the amount of refreshments supplied by the testatrix to voters at an election, by the directions of a person named Miller. And the whole question in the case was this: was Miller a principal in giving the orders, or did he only act in so doing on behalf of Mr. Edwards the chairman of the committee? No objection was ever made at the trial that the transaction was illegal by reason of the Treating Act. In the judgment, Parke, B., says, "If, indeed, the meat and drink were supplied by the testatrix, *with a view to induce the electors to vote for a particular candidate*, the contract made would be illegal; but of this there was no sufficient evidence in this case; and, if there had been, such a defence would not have been admissible under the plea of non assumpsit, since the new rules." It may well be questioned whether there is anything in any of these decisions, at all inconsistent with the well established rules of parliamentary law on this subject.

It has been argued (a) that a candidate ought not to be disqualified by reason of treating by his agents, unless the circumstances were such that he would have been liable in an action to the person providing the entertainment, supposing such expenses

(a) Pickering, Remarks on Treating, p. 15, and Warren's Elect. Com. 531.

had not been made illegal ; that is to say, unless the candidate himself ordered the entertainment or gave authority to some one else to order it. Supposing that there were no illegality in the transaction, the only question would be, as in the case of *Thomas v. Edwards*, to whom was credit given, or who was the person really making the contract. But the statutes having declared that the giving entertainment to voters on behalf of a candidate shall be illegal, it may well be doubted whether a tradesman supplying provisions, by directions of a person whom he knew to be acting on behalf of the candidate at the election, could recover the amount of his bill, even though he had given credit to the agent only, and not to the candidate. However that may be, public policy requires that a candidate should suffer, in so far as his own eligibility is concerned, for the corrupt acts of those whom he has employed to secure his return, as much as if he had expressly authorised such acts to be done. The principles which have governed the decisions of committees is thus stated by Mr. Rogers : " A candidate at an election professedly seeks an office of trust for the benefit of the public ; the public, therefore, is the party mainly interested ; nor is it too much to require that, in seeking to obtain such office, the candidate should employ trustworthy agents. Even in the discharge of private trusts a man is generally made responsible for the honesty of the persons whom he employs, and is liable for any defalcation of which they may be guilty. In elections, when the protection of the public interest is the object to be obtained, a candidate has no right to complain if he is made to

fer from the misconduct of others selected or allowed to act for him " (a).

The correctness of the parliamentary rule on this subject was recognised by Lord Tenterden, in the case *Felton v. Easthope*, Sitt. after Trin. Term, 1822 (b). This was an action for penalties for bribery. The agent by whom the acts of bribery were committed was the principal witness, the learned Chief Justice directed the jury that "it was perfectly true if an agent may be employed for various purposes, to canvass, to treat, does without the knowledge, privity, or approbation of the principal, promise a sum of money, the principal is not liable to be sued under this act for the penalty. No person is liable to be sued for that penalty unless that which was improperly done was done by his authority. If an agent bribes voters, with or without the knowledge and direction of the principal, it will void the election: the principal is to that extent liable, but not so in an action of this sort. It must be proved to be done with the knowledge and authority of the principal." This rule has long been recognised by committees as law, not only in cases of bribery, but in treating also; with this exception, that if all the treating proved was anterior to the date of the writ, it was not illegal unless it took place by the authority, or at the expense of the candidate (c). The recent enactment has done away with this distinction, and henceforth all acts of treating

(a) Rogers on Elect. Com. 222. The same subject is treated of very fully in Mr. Warren's recent work on Elect. Com. p. 459.

(b) Rogers on Elections, 259.

(c) 5 & 6 Vict. c. 102, s. 22.

done by an agent on behalf of a candidate will avoid the election and disqualify the candidate, whether he sanctioned them or not, and whether he pays for them or not. There will be no distinction between the responsibility for cases of treating and for cases of bribery.

It seems hardly necessary to insist upon so well-known a rule of Parliamentary law, except that, as has been already pointed out (a), a contrary opinion has been recently put forth. And it has been contended by an able author, that committees require proof that the treating went on, *not only* with the knowledge, but by the desire and at the charge of the candidate (b). This doctrine is certainly not consistent with any reported decisions of committees. In a recent case, *Huddersfield* (c), it was argued, that the law was less stringent now than it used to be, and that since the passing of the 5 & 6 Vict. c. 102, s. 22, it was necessary for the petitioners to show that the treating, which had been carried on by the agents of the sitting

(a) *Ante*, p. 119.

(b) Warren on Elect. Com. 531. Two authorities are cited in support of this position, the *Newcastle-under-Lyme*. B. & Aust. 445, and *Lyme-Regis*, ib. 529. In the first of these cases the committee came to no resolution on the subject of treating, probably because, as stated in the case (p. 445), the evidence was confused and contradictory, and the quantity of refreshment consumed was very small. The *Lyme-Regis* case was one of scrutiny, and the vote in question was struck off the poll, whether for bribery or treating is not clear.

(c) 2 P. R. & D. 128. This decision or resolution was given after much consideration by the committee, which was presided over by a learned chairman conversant with the law of elections. The Right Hon. S. Walpole, Q. C.

member had been paid for wholly or in part by him. His argument was *then* correct, so far as treating prior to the *teste* of the writ was concerned; but it was pointed out on behalf of the petitioners, that the treating in the case had taken place after the *teste* of the writ, and was therefore governed by the statute 7 Wm. 3, c. 4. The committee resolved "that they are of opinion that the provisions of the 7 Wm. 3, c. 4, are neither repealed nor abridged by the 5 & 6 Vict. c. 102, s. 22. That they are also of opinion, that if any person, by meat, drink, entertainment, or provision, shall, before the *teste* or issuing of the writ for any election, directly or indirectly given, presented, or allowed, treat any candidate in any of the following ways: *viz.* first, by himself; or secondly, by any other ways or means on his behalf; or thirdly, at his or their charge, such acts are and must be deemed to be treating, within the provisions of the first mentioned statute." In this case the sitting member was unseated for the offence of bribery and treating done by his agents, although "it was not proved to the committee that either the bribery or treating were committed with the knowledge and consent of the sitting member." One committee seems to have sanctioned the correctness of this doctrine, that treating will not vitiate an election unless the candidate authorised it, or knowingly allowed it. The committee in the *Dungannon case*, 1854 (a), reported *inter alia*, "that previous to and during the election of 1852, several tierces of porter were ordered and paid for by James Boland, and supplied for the use of the tenants and voters on

(a) Printed Minutes.

different town lands, who were the friends and supporters of Mr. Maguire; and that the same James Boland was the person *principally entrusted* with the payment of the expenses of the election on behalf of Mr. Maguire; that the order, payment, and supply of this porter were without the knowledge of Mr. Maguire, and neither authorised nor knowingly allowed by him." The committee reported Mr. Maguire to be duly elected. They seem to have been alarmed at the extent of the disqualification created by the statute 5 & 6 Vict. c. 102, s. 22, for they state at the end of their report: "That it appeared to the committee that the disability (for the remainder of a Parliament) created by the peculiar language of the 5 & 6 Vict. c. 102, s. 22, was intended to be imposed only in the cases in which the candidate, by his own act, his own suggestion, his intentional allowance, or unequivocal adoption, made himself a party or privy to the act of corrupt treating." No doubt this was so; but the committee created the difficulty for themselves by entering on the inquiry (a). It appears from the report that the treating went on *during* the election, and the evidence shows that it continued even beyond the close of the poll (b). This therefore

(a) This committee was also presided over by a learned member of the legal profession, the Right Hon. J. Napier, Q. C. The decisions of this committee were come to after long deliberation, but, though conscious of the weight that will be justly attached to the opinions of the learned chairman, it is submitted with all deference, that in the matter mentioned in the text, as well as in the matter hereafter to be considered, of jurisdiction, the decisions of this committee were at variance with the law of Parliament.

(b) A supper was given to voters by the sitting member,

within the statute of 7 Wm. 3, c. 4, under which it was never necessary to show assent or payment on the part of the candidate. If then they had any jurisdiction to inquire into the proceedings at all, in the election of 1852 ought at once to have been rendered void by reason of the treating *during* that election. But as this statute did not create a disqualification for the *whole* Parliament, which was first created by the act of Victoria, and as this latter act required proof of assent, or payment on the part of the candidate, the committee seem to have excluded the treating from their consideration that fell within the act of William, that is to say, all that was subsequent to the *teste* of the writ. The new enactment entirely removes any difficulty that might have been created by this decision. Any act of treating on behalf of a candidate, before, during, or after election by an agent, without the knowledge or consent of the candidate, will disqualify him on that election; and a *decision* to that effect will disqualify him for the remainder of the Parliament (*a*). The same rules will no doubt be applied by committees in cases of "undue influence." And an objection hereafter will be avoided in consequence of

the election, on the polling day, for which he paid, at which he was present, *ante*, p. 136.

When the Corrupt Practices Prevention Act was under discussion in the House of Commons, it was proposed to limit the extent of this disqualification for the remainder of the Parliament, to cases where the treating had taken place *with the cognisance* of the sitting member, but this amendment was rejected, 109, Journ. 448. Here therefore is another recognition by the Legislature of the principle intended for in the text.

any act of violence, restraint, intimidation, abduction, or other description of undue influence committed by the agent of the candidate.

Who are Agents?] Who shall be considered agents in an election is rather a question of fact than one of law. There are, however, a number of decisions upon the point as to what shall be sufficient evidence of agency. It is admitted on all hands that it is impossible that an election can be carried on without the employment of agents. Further, it is generally acknowledged "that the principles of agency derived from the transactions in private life cannot be applied with strictness to cases of electioneering agency" (a). And when the principles of general and special agency, as bearing upon mercantile affairs, or as administered by courts of justice, have been discussed at some length, it is generally admitted that these principles can only be applied in election transactions with essential modifications. There is this striking distinction between the rules governing common agency and electioneering agency, viz. that in the former, though a principal may be liable for the consequences of all legal acts done by his agent, he cannot be made responsible for illegal acts done by the agent unless they are done with his express authority. Thus, a master is answerable in trespass for damage occasioned by his servant's negligence in doing a lawful act in the course of his service, but not so, if the act is in itself unlawful, and is not proved to have been authorised by the master; *Lyon v. Martin* (b). In an election inquiry, on the other

(a) Rogers, p. 221, n.

(b) 8 Ad. & Ell. 512.

the candidate is always responsible for the illegal acts of his agent, even though they have not been authorised by him; *Felton v. Easthope (a)*. It is this point of distinction which forms the ruling principle in election law upon this subject. No change has been introduced into the law respecting agency by the "Corrupt Practices Prevention Act." All persons who would have been considered agents before will continue to be so considered, and their agency must be established by the same proof. Agency is usually established by the proof of authority to do lawful acts connected with the business of the election; and the candidate is then made responsible for the acts of such authorised agents; and it is then sought to bring in evidence the acts of those persons whom such accredited agents have employed under them; *Middlesex*, 2 Peck. 105; *Ipswich*, 1 Lud. 38; 2nd *Ipswich*, B. & Aust. 605; *Regent v. P. & K.* 157.

The 31st section of the Corrupt Practices Prevention Act, to which attention has been before drawn in the chapter on "The Election Auditor," requires each candidate to give to the election auditor, in writing, the names of all the persons whom the candidate has authorised to be his agents for election expenses; and the section goes on to provide that "no other persons shall have authority to expend any money, or incur any expenses of, or relating to, the election, in the name or on behalf of the candidate." It is not intended by this to limit the responsibility of the candidate to the acts of such authorised agents; what is intended must be this, that it will not be lawful

(a) Rogers on Elections, 259.

for any other persons than these agents for election expenses to spend money on behalf of the candidate at the election, and if any other persons do so spend money it will be an illegal payment within the act. While this act was under discussion in the House of Commons, a clause was proposed to limit the liability of the candidate to the acts of these authorised agents for expenses, and providing that a candidate duly notifying the appointment of his agents to the election auditor should not have his election avoided, by reason of any illegal acts done by any other person than himself, or his agent or agents named in writing to the election officer, according to the provisions of this act, unless such illegal act shall be proved to have been done by his authority or sanction. This clause was negatived by 114 to 79 (a).

If one of the persons named as an agent for election expenses were to participate in any way in any species of corrupt practice, the election, upon proof of such misconduct, would at once be avoided. This, however, will not often happen; the persons selected as the agents for expenses will probably be respectable men of business, who will hold as much aloof as possible from the lower matters of the election. As is observed by Mr. Rogers: "When bribery is in contemplation, the accredited agent of the candidate, like the candidate himself, is studiously kept in ignorance of what is going on; his employment is strictly limited to what is legal. It would be as reasonable to expect to prove that a candidate had given to an agent written instructions to bribe, as to discover that the persons engaged

(a) 28 July, 1854, 109 Journals, 448.

giving money to voters were his confidential agents. It seems that the true rule is to hold a candidate responsible for the acts of those whose services he employs for or adopts, without reference to the degree of evidence he may be supposed to have placed in the case." (a).

It has been usual, heretofore, in election inquiries, to select some one or two persons as the principal agents of the candidate, through whom the authority of the other persons employed, and whose acts are impugned, is derived. In order to establish this chain of authority and responsibility, it has been customary to commence by showing that certain persons made the preliminary arrangements for the election,—ordered the printing of addresses,—inserted advertisements in newspapers,—engaged committee rooms and messengers to attend them,—or made the arrangements for the hustings and polling booths, or paid the expenses of the election when it was over. It can be seen that by the provisions of the new act, a large portion of these duties will devolve upon the agents for election expenses, and if they carefully abstain from interfering in the canvassing at the election, and confine themselves to the duties of their appointments, there will probably be greater difficulty than heretofore in proving agency. That lower class of agents who transact the dirty work of an election, and when necessary, superintend the bribery, treating, and kidnapping of voters, seldom come in contact with the candidate himself. The mode of connecting them with the candidate has been by showing that they have derived their

(a) Rogers on Elections, 258.

authority to act in the election from the superior agents of the candidate, whose authority, as already mentioned, was proved by the performance of divers legal acts. But as this latter part of the proof may hereafter be wanting, it will become more difficult to connect the parties actually engaged in the corrupt practices with the candidate.

The agency, however, must in all cases be established, and it will usually be done by the proof of a greater number of small matters relating to the election, in which the alleged agents are brought into communication with the candidate himself, or his accredited agents. These matters, however, in order to afford any evidence of agency, ought to be of such a nature as to import that some confidence was thereby placed in the alleged agent.

Canvassing]. The question has often been discussed whether canvassing affords any evidence of agency in the person so employed. In the case of *Felton v. Easthope*, before cited, Lord Tenterden says: "It is perfectly true, if an agent who may be employed for various purposes to canvass, &c., does, without the knowledge, privity, or approbation of the principal, promise a sum of money, the principal is not liable to be sued under this act for the penalty," &c. Canvassing is here mentioned, as one of the employments in which an agent would probably be engaged; but it can hardly have been intended that a person was to be considered an agent because he was employed to canvass (a). It is usually one of the circumstances proved in order to establish agency.

(a) In the *Nottingham case*, B. & Arn. 164, Mr. Austin

In the *Mitchell case*, 1 Luders, 83, it was held, that evidence of canvassing with the sitting member was sufficient proof of agency. The *Norwich* committee came to similar decision; P. & K. 576.

In this same case, frequent canvassing in company with the sitting member, together with the payment of a bill for beer consumed at a public house in the street of the sitting member, was held sufficient to establish agency. See also *Cirencester case*, 1 Peck.

In estimating what weight should be attached to the fact of canvassing in company with the candidate, the committee would probably inquire whether the alleged agent joined the canvassing party at the request of the candidate, or of his own choice; in this case, it would not be just to attach any importance to his presence with the candidate, for the latter may have placed no confidence in the person so joining the party. When, however, it can be shown that a person has been daily, or very frequently in the company of the candidate, with the canvass book in his hand, going from house to house, noting down promises and refusals, and then, it may be, returning to the committee-room with the candidate to reckon up the result of the day's canvass, this would afford very strong *prima facie* evidence of agency. It would, however, always be open to the explanation, that such a person was employed for the purpose of canvassing, on account of his intimate acquaintance with the names and residences of the voters, and that the

words of the passage above referred to as "a loose and imperfect note of an *obiter dictum* at Nisi Prius."

candidate had placed no other trust in him. In the *Ipswich* case (a), the committee appear to have attached importance to the circumstance of canvassing. In a recent case, *Yarmouth* (1848) (b), the committee held repeated acts of canvassing with the sitting members to amount to proof of agency. Other committees, however, have considered further evidence to be necessary, before they will make a candidate responsible for the acts of a person who has canvassed for him, 2nd *Sligo* (1848) (c); *Cockermouth* (1853) (d).

When a candidate takes little part in the business of the election, but intentionally delegates the duty of soliciting the support of the constituency to others, canvassing becomes strong evidence of agency.

Committee, how far Agents.] The question whether a candidate is responsible for the acts of his committee collectively, and also for those of each member of the committee, is one on which different opinions have existed. In the case of *Ridler v. Moore and Francis* (e), Lord Kenyon told the jury that "the committee were collectively and individually agents, and that the defendants were answerable for every act done by any of them, in relation to the election." The accuracy of this position has been questioned, and it has been said that the rule has been laid down too broadly, and that a candidate ought only to be bound by the acts of his committee as a body, as there

(a) K. & O. 343, 345.

(b) 1 P. R. & D. 4.

(c) 1 P. R. & D. 212.

(d) Minutes, pp. 38 & 41, as to *Wilson's* agency, and 188 as to the agency of *Senhouse* and *Rapley*.

(e) Clifford, 371.

be those on the committee in whose individual opinion he would feel no confidence (a). Committees of the House of Commons have on several occasions attached little weight to the mere fact of a person being on the committee; *Cirencester case*, 1 Peck. So in the *Oxford case*, P. & K. 61, the committee resolved: "That no evidence should be given of what passed in the committee-room, without previous proof having been given of the agency of the parties concerned." The important points to be considered are these: was the committee selected by the candidate himself or his accredited agents? or, on the other hand, was it a self-constituted body? Again, was the candidate often present at the committee-room, was the business of the election conducted by the committee without the knowledge and assent of the candidate? Could a candidate take but a small share in the work of the election, and leave the main business to others, thereby increasing his responsibility for their acts. If he knew of the committee, and allowed them to make orders and incur expense for his advantage, he would probably, at the present day, be made liable for their acts.

The case of *Honeywood v. Geary* (b) is an authority in support of the rule laid down in *Ridler v. Moore v. Francis*. This was an action brought to recover from Sir W. Geary, a candidate, a part of the expenses of the plaintiff, who had also been a candidate at the election. During the polling, a proposition had been made by a friend of Mr. Honeywood to a Mr. Larkins,

(a) Rogers on Com. 225.

(b) 6 Esp. 119.

who was at the head of Sir W. G.'s committee, that Sir W. G. should have the benefit of Mr. Honeywood's second votes, if he would contribute to the expenses of Mr. H. at the election. This was agreed to. It was objected by *Best*, Serjt., for the defendant, that such a conversation could not be given in evidence: no direct communication with Sir W. G. was proved: he might have delegated a power to his committee to enter into such an agreement, but the committee constituted one body, and any orders to bind him should be the act of the majority of the committee; this was the act of Mr. Larkins *only*, and could not be obligatory either on the committee at large, or on Sir W. Geary. *Shepherd*, Serjt. for the plaintiff, contended, that each member of the committee had authority; they were delegated by Sir W. G. to act for him. He then cited the case of *Ridder v. Moore*; and relied on the fact, that Larkins was the chairman of the committee, and that he had given orders for every part of the conduct of the election; and evidence was then given to that effect. Mansfield, C. J., allowed the evidence as to the arrangement by Larkins to be given: he observed, "That it had been proved that the committee had full authority to act for Sir W. G., that they had ordered chaises, and gave general orders respecting the election, which Sir W. G. adopted, and had the benefit of; he should, therefore, hold Sir W. G. bound by the agreement so made by Mr. Larking acting in that capacity."

When a candidate thus delegates all authority to his committee, he will probably be held to be bound as in this case of *Honeywood v. Geary*, for their acts collectively and individually. In a case before cited,

Mayo, 1853 (a), the sitting members had agreed to the nomination of a committee, to consist mainly of Roman Catholic priests, and they were to decide upon the claims of the candidates upon the representation of the county, and the whole business of the election was to have been delegated either to them, or to an independent club; there could be but little doubt that they filled the character of agents.

[*Club, how far Agents.*] This question must be governed by the same considerations as in the case of a committee. Did the candidate recognise the club acting for him? did he attend their meetings? did he leave any portion of the legitimate business of the election in their hands? did he authorise them to spend money on his behalf? If he did, he ought to be made responsible for their acts. If it be said, that there might be members in the club in whose individual discretion the candidate would have placed no confidence, the answer is, that he can only blame himself for not having more carefully selected the persons who were to endeavour to secure his return. In the *Wright case*, P. & K. 151, where it appeared, that a committee consisting principally of voters, had invited the candidate to stand; that the business of the election was carried on at the club; that several members of the club accompanied the candidate on his canvass; that the candidate attended meetings of the club almost every evening, on which occasions from thirty to fifty members were assembled; the committee nevertheless decided, that the members of this club were the agents of the candidate. A special report

(a) *Ante*, p. 153.

was made against the club for bribery, but the candidate was declared duly elected. In another case, *Bristol (a)*, in the same year (1833), the committee resolved: "That judging from former precedents, they will not allow any act of the Operative Conservative Association to affect the sitting members, unless their connection be distinctly proved. They are, however, perfectly willing to hear any evidence that can be adduced, in order to prove that this society has, or has not, exercised an undue interference at the last election for the city of Bristol." The petitioners were unable to show any connection between this association and the sitting members, who were in consequence declared to be duly elected. Were a candidate at the present day to leave his affairs in the hands of a club, as was done at this *Newry* election, there can be little question that his seat would be in considerable jeopardy.

Special Agency.] Where a person has been employed for a particular purpose only, his agency will not extend beyond the duties for which he has been engaged; when the particular service is completed, he will cease to be the agent of the candidate. In the case of *Fenn v. Harrison (b)*, Mr. Justice Buller says: "There is a wide difference between general and particular agents. If a person be appointed a general agent, as in the case of a factor for a merchant residing abroad, the principal is bound by his acts. But an agent, constituted so for a particular purpose, and under a limited and circumscribed authority, cannot

(a) P. & K. 574.

(b) 3 T. R. 757.

and the principal by any act in which he exceeds his authority; for that would be to say, that one man may and another without his consent." To a certain extent the doctrine of limited agency has been recognised as applicable to election agency.

In the *Durham case*, 2 Peck. 185 (a), it having been proved that a person of the name of Brand had been employed by the sitting member at Durham to pay for the subsistence of non-resident voters, evidence was offered of some orders which he (Brand) had given respecting the employment and payment of certain resident voters. The evidence was objected to, on the ground that the proof of a particular authority did not exist in evidence of acts not within the scope of that authority, and the committee desired the petitioners to call further evidence of general agency.

So also in the *Cockermouth case*, 1853, where it was proved that a person of the name of Rapley, who was the butler of General W., the sitting member, had been employed to pay the band and flag-bearers, the committee decided "that sufficient evidence had not been given to establish the general agency of Rapley" (b). In the *New Windsor case* (c), the petitioners gave in evidence that a person named Mander was managing clerk to the solicitor, the accredited agent of the sitting member; that this Mr. Mander had taken an active part in treating the electors. On the part of the sitting member the

(a) In this case it seems to have been admitted that the payment for the subsistence of non-resident voters was legal, but that it became illegal if they were resident.

(b) Minutes, *passim*, and p. 102.

(c) Minutes, *passim*, and p. 109.

solicitor was called, and he thus described Mander's duty at the election: "He carried my bag with cards in it, and he directed circulars; he had the management of all the messengers; he paid the messengers, and Bunker and his men (a), and that, I think, is about the whole of his duty." The committee declared Lord C. W., the sitting member, to be duly elected; but whether they disbelieved the evidence, as to Mander's participation in the treating, or looked upon him as having only a limited authority at the election, does not appear. In the 2nd *Taunton case*, 1853, evidence was given that a man named Rollings had been engaged in bribery at the election. The only evidence to connect him with the sitting member was, that he had been employed by his accredited agent to look after and pay certain men employed as runners or watchers at the election. The committee upheld the election. Here also it does not appear whether they considered that Rollings was not a general agent, or whether they disbelieved the evidence as to the bribery.

This distinction between general and special agency can only be adopted in election inquiries with very great caution. It would be the constant defence for a candidate, when a person employed by him to do certain legal acts had been guilty of illegal ones, that the agent was employed solely and specially for the legal object. If this defence were generally allowed, it would put an end to the whole law with regard to election agency. In the case of *Fenn v. Harrison*,

(a) *Ante*, p. 149.

Miller, J., after saying that one man ought not to act against his consent, goes on to say: There is a class of cases which have been thought to bear extremely hard upon masters, who are held liable for the misfeasance of their servants in driving their carriages against those of third persons; but those cases have been determined on the ground, that it must be presumed that the servants have acted under the orders of their masters. But suppose a master ordered his servant not to take his horses and carriage out of the stable, and the latter went in defiance of his master's orders; there is no authority which says that the master shall be liable for any injury done to another by such an act of the servant." In an election inquiry, however, the rule would be very different; one man can bind another against his consent; and if an agent disregards the instructions of his principal and engages in illegal practices he will thereby render the candidate ineligible; *Bertford*, P. & K. 544; 2nd *Cheltenham*, 1848, *Mins.* Where two candidates stood upon the same interest at an election, and had the same committee-room and managers, it was held that acts of bribery committed by an agent employed by one of the candidates, disqualified the other; that under such circumstances the agent of one was the agent of both; *Ipswich*, P. & O. 871.

It has been held that the general agency of one attorney at an election will not afford any evidence of the agency of his partner; *Norwich*, P. & K. 565. Where a person having canvassed a borough resigned in favour of his brother, who then made use of the same colours and houses, and employed the same

persons in the management of the election as the first candidate had done, it was held that these circumstances did not establish such a case of agency on the part of the first candidate as to allow his letters to be read in evidence against his brother; *East Retford*, 1 Peck. 479.

Agency, how proved.] Agency must be established in all cases, either by showing the authority given by the principal, or by the proof of acts on the part of the agent from which the authority can be inferred. It cannot be proved by the declarations of the agent. "One man cannot be charged with the offence of another because he calls himself agent." Per Buller J., *Petrie's Oricklade case*, 372. In the *Dunfermline case*, 1 Peck. 15, the committee refused to allow agency to be proved by the declaration of the alleged agent. "The agency ought to be proved by acts done." In the *Great Grimsby case*, 1 Peck. 76, a question was asked, "Who acted as agents for the sitting members?" It was objected to as too general, and that agency ought to be proved, either by the declarations of the principal, or the specific acts of the supposed agent, from which the committee are to draw the conclusion whether he acted as agent or not. The committee decided, that the question should not be put. So also in the *Shrewsbury case*, 1807, *Mins.* 16th Feb., the committee refused to allow this question to be put: "Who were the active agents of the sitting member?"

The 4 & 5 Vict. c. 57, introduced an important change in the law with regard to the order of proof in cases of bribery. That statute refers to bribery only. Committees can now receive evidence upon the charge

bribery before the agency of the parties engaged it is established. This statute was not intended make any alteration in the rules of evidence, so as render that legal evidence which was not evidence before. All that was done was to invert the order of proof. This matter has been frequently discussed in late years before committees, when an attempt has been made to give in evidence declarations of parties in order to affect the candidates thereby. If these declarations are those of agents, they would have been legal evidence against the candidate by common law, even if the agency had been proved; and now by force of the statute 4 & 5 Vict. c. 57, they are evidence, as part of "those facts whereby the charge of bribery is to be sustained," and can be proved before the agency of the declarants is established. *Nottingham case*, B. & Arn. 168.

Some committees have imagined that this statute has allowed them to receive in evidence declarations from voters that they have been bribed. Such declarations were never legal evidence at any period of the inquiry, unless the voters could be proved to be *agents*. The committee in the *Sudbury case*, B. & Aust. 249, allowed the declarations of voters to be given in evidence, before agency had been proved, "inasmuch as they might have to report to the House upon facts of bribery, although not committed with the knowledge or consent of the sitting member or his agents." Even if this were so, the fact of the bribery must be established by legal evidence, which hearsay never can be, unless it proceed from a party to the suit. The 2nd *Horsham committee*, 1848, received these hearsay statements; *Lyme Regis*, 1848, also; P. R. & D. 32. And the *Kidderminster committee*,

1848, allowed the statement of the wife of a voter, said to have been bribed, to be given in evidence; 1 P. R. & D. 266. See also similar cases in the same volume of Reports, 1 P. R. & D. pp. 16, 29, 217, 249.

During the session of 1853 the decisions of committees on this subject were very conflicting. In the *Bridgenorth case*, 2 P. R. & D. 18, the committee decided that the statement of a voter that he had received money for his vote was admissible evidence that he did receive money for his vote. The chairman afterwards intimated, in explanation of their resolution, that the words "admissible evidence" were intended to apply only to the evidence as against the voter himself. The evidence could not be given against the voter, because he was no party to the inquiry; the only person against whom the evidence was given was the sitting member. In the 2nd *Taunton*, 1853, Minutes, p. 21, such evidence was also received. In the case of the *Wigton Burghs*, 2 P. R. & D. p. 137, the committee refused to receive such evidence, and decided "that hearsay evidence ought not to be admitted, proof not having been given to the committee of the impossibility of producing, as evidence before the committee, the person to whom such hearsay evidence applies." Had it been impossible to produce the voter, on account of his absence from the country, or sickness or death, it would not have made this hearsay evidence admissible. The declaration was not of such a nature as to become evidence on the death of the declarant (a). In the

(a) 1 Taylor on Evidence, 438. A statement is only admissible in evidence on the death of the party making it, when it is against his interest, and that interest must be of a pecuniary nature; *Sussex Peerage*, 11 Cl. & Fin. 110.

Guildford case, 1853 (a), it was proposed to establish the whole charge of bribery by means of these declarations of voters, but the committee held that such evidence was inadmissible ; and the case for the petitioner being thereupon abandoned, the committee decided that the charges were frivolous and vexatious, and that the costs of them should be paid by the petitioner.

In cases of treating and undue influence, the agency of the parties engaged therein must be proved before any evidence can be received of the corrupt acts themselves, or of any declarations made with regard to them. An exception has been made to this rule, that, when the circumstances which go to establish agency are so mixed up with the evidence of treating that they cannot conveniently be separated, the committee will allow the general evidence to proceed before the agency is established. They usually, however, intimate that they expect that counsel will prove agency as soon as possible ; *Cambridge*, B. & Arn. 185 ; *Wigan*, B. & Arn. 180 ; *Aylesbury*, *Bewdley*, 2nd *Cheltenham*, 1848.

When once the agency of a party has been established all his acts may be given in evidence, and also all declarations made by him relative to the proceedings at the election ; *Kingston-upon-Hull*, 2 P. R. & D. 97. In the *Durham case*, 1853 (b), it was proposed to give in evidence a conversation between the witness and the agent of the sitting member which had taken place some months after the election. This was objected to on the ground that the agency of the party holding the conversation terminated with the election, and that conversations with him as agent to the sitting

(a) 2 P. R. & D. 111.

(b) Printed Minutes, p. 52.

member, subsequently to that period, could not be received in evidence; it was answered, that, Mr. Ward having acted as agent during the election, admissions made by him were admissible. The committee allowed the questions to be put.

General Corruption.] An election might be avoided in consequence of corrupt practices, in which neither the candidate nor his agents took any part, if it could be established that the corruption was of so universal a character as to have influenced the result of the election; *Rogers on Elections*, 263. It is not probable, however, that such corrupt practices could take place at an election, without the candidate or his agents becoming cognisant of them, and being more or less implicated in them. Such might be the case when the corrupt practices used were those of undue influence only. An election might be secured by the exertion of undue influence by a mob, or some particular body of persons who might be altogether unconnected with the candidate; under these circumstances, there can be no doubt that the election would be void at common law. The candidate who had been returned by the use of such undue influence, exercised by persons, strangers to him, would probably not undergo the statutable disqualification of being incapable to represent that place during the Parliament. Whether he would under such circumstances be eligible to fill the vacancy created by his election being declared void seems very doubtful; probably he would not, because the second election being looked upon as a continuation of the first, the undue influence which secured his first election might be held to operate in his favour on the second.

5. *How and when Corrupt Practices can be inquired into by a Committee.*

It is proposed to consider in this section, when, and in what manner, it is competent for an election committee to inquire into the existence of corrupt practices at an election. The entire jurisdiction of election committees is limited and defined by the provisions of the statute (a) which calls them into existence. Some committees have shown a desire to extend their inquiries beyond these proper limits, and it is therefore essential that it should be clearly understood how far they ought to go.

Inquiry on first Election.] And first, as to corrupt practices at the *last* election. This is the most usual form of the inquiry. It is that which occupies the attention of committees immediately after a general election. The inquiry is then in the first instance, whether this election of the members returned was void by reason of the commission of corrupt practices by them or their agents. If the committee find that either bribery, treating, or undue influence were practised at that election, either by the sitting members themselves or their agents, they will report to that effect to the House; and then the statutable disqualification to represent that place for the remainder of the Parliament will follow.

(a) The statute at present in force for the trial of what are properly designated as election petitions is the 11 & 12 Vict. c. 98. The 5 & 6 Vict. c. 102, authorises an inquiry in certain cases into bribery at elections, but in such an investigation the validity of the election is not in question.

Section 36 of 17 & 18 Vict. c. 102. "If any candidate at an election for any county, city, or borough, *shall be declared* by any election committee guilty by himself, *or* his agents (a), of bribery, treating, or undue influence at *such* election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city or borough, during the Parliament in existence" (b).

It will be seen that the ineligibility for the remainder of the Parliament, is created by the candidate having been "declared" guilty of corrupt practices by himself or his agents. This declaration of guilt can only be pronounced by a committee legally constituted, to inquire into the circumstances. No committee can be appointed so to inquire, unless the petition praying for the investigation has been presented to Parliament in accordance with the statute; that is to say, within the time limited by the sessional orders of the House of Commons. If this time has been allowed to elapse, no inquiry can afterwards take place before an election committee into the conduct of the sitting member at *that* election. Whatever corrupt practices may have occurred, they cannot afterwards be brought forward so as to affect the seat of the sitting member.

Candidate not Returned.] The conduct of an unsuccessful candidate at an election may also be inquired into by the committee who are trying the

(a) It was proposed in the House of Commons to insert after the word agents in this clause, the words "with his cognisance," but the amendment was negatived. 109 Journ. p. 448.

(b) 17 & 18 Vict. c. 102, s. 36.

validity of the election, when the seat is claimed for him, either by himself, or by voters petitioning on his behalf (a). When once the claim to the seat has been made, the party petitioned against has a right to show that the unsuccessful candidate is incompetent to sit. An abandonment of the claim to the seat will deprive the parties defending the return of this right (b). It is only, however, when the seat is thus claimed, that the committee have any jurisdiction to hear recriminatory evidence against the unsuccessful candidate. It has happened, however, in one or two instances recently, that committees have reported upon the conduct of an unsuccessful candidate, when the seat was not claimed, not with the intention of disqualifying the candidate from standing again, but in order to explain to the House whether there were sufficient grounds to justify them in making a special report, with a view to a general inquiry by commission into the condition of the borough. Thus in the *Tynemouth case*, 1853, where the seat was not claimed for the unsuccessful candidate; the committee, though they properly refused to allow the counsel for the sitting member to go into recriminatory evidence, or to show that treating had taken place on the other side, nevertheless stated in their report to the House, "that a system of corruption by means of refreshment tickets, illegal orders, prevailed at the last election on behalf of both candidates" (c). In the *Liverpool case* in the

(a) *Kirkcudbright*, 1 Lud. 72; *Galwey*, P. & K. 518; *Great Yarmouth*, F. & F. 663; *Ennis*, K. & O. 434.

(b) *Coventry*, 1 Peck. 99; *New Windsor*, 2 Peck. 188.

(c) The report also stated, that corrupt practices had extensively prevailed at the last election. A commission

same session, the committee stated in their report, "That so far as the conduct of the election, on the part of the other candidates, came incidentally before the committee, there was no evidence, and the committee has no reason to believe, that any illegal practices took place with regard to the voters in the interest of such candidates." This was one of the reasons stated by them, for not recommending the suspension of the writ or further inquiry into the proceedings at the election. Although the object of the committee in each case was most laudable, it seems very doubtful whether they ought to have made any allusion to the conduct of the unsuccessful candidates. In neither case had the conduct of those candidates been brought judicially under the notice of the committee by a claim of the seat on their behalf. The candidate could not have justified his conduct in the *Tynemouth case*; it would have been altogether irrelevant to the inquiry. The sitting members could not have impugned the proceedings of the unsuccessful candidates at the Liverpool election, for the same reason. What right, therefore, had the committees to make any report with regard to them? Suppose that a candidate were, under such circumstances, to be pronounced guilty of corruption, as was done in the *Tynemouth case*, would that be a declaration of guilt, within the 36th section, that would prevent him from representing the same place during the remainder of the Parlia-

subsequently issued to inquire into the proceedings at elections at *Tynemouth*, and the writ was suspended until the 23rd March, 1854.

? Surely this could not be so, for he never had opportunity of defending his conduct; it was none of the matter that the committee were sworn to. On the other hand, if the unsuccessful candidate at *Liverpool* had again contested that borough at the issuing of the fresh writ, could they have denied themselves from inquiry into their proceedings at the general election in 1852, on the ground that it was *res judicata*; and that a committee of the House of Commons had already determined that they had not been guilty of any illegal practices at that election? It is clear that they could not: the whole matter as to them was *coram non judice*.

When the conduct of the unsuccessful candidate has been brought properly before the committee by a petition for the seat, a decision by them that such candidate has been guilty by himself or his agents of bribery, treating, or undue influence, will disqualify him for the remainder of the Parliament; 17 & 18 Vict. c. 102, s. 36.

[*Inquiry on subsequent Election.*] If the seat has been claimed for the unsuccessful candidate, or if, though claimed, the committee to whom the petition against the election has been referred, have pronounced the election void, without coming to any decision upon the proceedings of such candidate (*a*), his conduct is not liable to investigation, if he should stand again for the vacancy created by the decision of such committee. An opinion was once expressed to the contrary by a committee of the House of Commons, who were appointed to inquire into and report upon

(a) 2nd *Cheltenham*, 1848, 1 P. R. & D. 224.

certain cases of compromise that took place in the session of 1842 (a). In that report they state: "Your committee desire to call the attention of the House to a part of the law of elections, which appears unsettled, if not defective. Two parties at an election, both being equally guilty of bribery, but one successful on the poll, and the other defeated, may experience a very different fate in consequence of the present state of the law. If the defeated candidate present a petition against the return of his successful opponent, and simply pray that the election may be adjudged to be a void election, on the ground of bribery and corruption, but do not ask for the seat, he may unseat his opponent, and render him incapable of being again returned; but as he himself does not pray for the seat, it has in some instances been determined that a case of retaliation cannot be entered into as respects the petitioner by the sitting member. Thus the petitioner, though equally guilty, may again propose himself, and be returned, in consequence of the very bribery practised at the preceding election, and into which no inquiry was permitted."

The law is not so defective as is supposed in this report; it is true that "retaliation" would not have been permitted in the case as put; but the guilty petitioner might have had his conduct investigated upon petition, so soon as he was returned, and the proceedings of both elections might have been laid bare before the committee. There is only one decision in favour of the view taken by this committee, the 2nd *Montgomery*, P. & K. 462. In that case, the

(a) *Nottingham*, B. & Arn. 144.

committee, after argument, directed the counsel to confine himself exclusively in his *opening* speech to the proceedings of the second election. The case went off on the insufficiency of the proof of the poll books, the second committee not allowing them to be produced by the same officer who had produced the poll books before the former committee; they then refused adjournment to allow further evidence to be produced, and the case came suddenly to an end. There are a number of cases, on the other hand, which have established that the conduct of a candidate at the first election may be investigated upon petition against the second; *Camelford*, C. & D. 239; *New Malton*, 1808, 1 K. 464; 2nd *Horsham*, 1848; 2nd *Cheltenham*, 1848; *Minutes*, and 1 P. R. & D.; and 2nd *Clitheroe*,

The principle of the rule, that a candidate's conduct at the first election is thus open to investigation, on a petition against the second, is this; that the second election is looked upon as a continuation of, and a subsequent part of the first. This is a well settled doctrine of the law of Parliament, and one long recognised.

The correctness of this rule, in cases of bribery, has, not, it is believed, been questioned. It was said by Mr. Austin, in argument, in the 2nd *Newcastle-Lyme* case, B. & Aust. 573, "That there was a mistake in the expression, that a member reported guilty of bribery at the first election cannot be re-elected at the second election. In point of fact, there are two forms of an election gone through, when an election is set aside for bribery and another election is held. But, in point of law, there is but one election;

the whole proceeding constitutes one election. There are two polls; but the return on the first being void on account of the incapacity of the returned member to sit, in consequence of his bribery, there must be a second poll in order that a valid return may be made." The correctness of this argument is proved by the invariable practice of committees. In the case of *Hindon*, 1777 (a), the election of General Smith and Mr. Hollis was declared void for bribery. Gen. Smith stood again and was returned, but was unseated on petition on account of his incapacity to stand. In the *Honiton* case, 1782 (b), the committee decided, that a candidate unseated for bribery was ineligible to fill the vacancy thus created. In the *Kirkudbright* case (c) the committee came to the same decision. In a great number of other cases the same principle has been affirmed. The member, found guilty of *bribery* by himself or his agents, was unseated by force of the common law, and not by any statute; and the incapacity to be re-elected on the vacancy then created was the consequence of the common law rule of Parliament. It is obvious therefore, that an unsuccessful candidate, who had bribed at the first election, might be petitioned against on that account if he stood again on the vacancy.

It has however been contended that this rule ought not to have been applied to cases of treating: because the words "such election" in 7 Wm. 3, c. 4, s. 2, ought not to be construed to mean any election but the one at which the treating took place.

(a) 36 Journ. 94; Cliff. 184; 4 Doug. 287.

(b) 3 Lud. 162.

(c) 1 Lud. 72; 2nd *Canterbury*, Cliff. 361.

Lord Glenbervie observes upon this (a): "The rule, however, has been understood otherwise; and the words "such election" are explained to mean any election made to fill the particular seat for which the writ issued, which, although a new writ issues, a second election is to do, for it cannot be said to have been supplied by the first, nobody having thereby entitled to take possession of it." It is, however, to be questioned whether it is by interpreting the words "such election" as including the second election, that the rule has been extended to the case of treating. When a person elected was unseated by force of the Treating Act, the common law disqualification immediately attached to him, and he became incapable of standing on the vacancy. Whether it be from the construction put upon the words "such election," or by force of the common law, the result was the same, and it has been uniformly recognised to be the law of Parliament.

It is sometimes said that the 2nd *Norwich* committee, in 1849 (b), came to a different conclusion. Their report does not contravene the general practice. A member unseated was returned again, and retained his seat on petition. But, as the first petition contained allegations which merely made the first election void, and as evidence was given upon them, the second committee had no means of deciding why the member was unseated by the first committee. Another case has been often cited as having gone too far the other

Doug. 410.

In the report of the case it is stated that a private communication was made by the chairman to the learned counsel as to the grounds of their decision. See Clifford, 10.

way, and as having extended the statutable or common law incapacity, whichever it was, to the whole Parliament; *Thetford*, 1700 (a). From that time down to the present the rule has been acted upon, that a member unseated for treating was in the same position as a member unseated for bribery. In the 2nd *Southwark case*, Cliff. 131, all the former cases are reviewed. In the 2nd *Maidstone case*, F. & F., it was admitted by the counsel for the sitting member, that no distinction could be raised between bribery and treating as grounds of disqualification.

(a) This case has been so uniformly quoted by different authors, from Lord Glenbervie down to the present time, as proving that the House of Commons on that occasion extended the incapacity too far, that it is with diffidence that it is now questioned whether any such construction was ever put upon the act. Mr. Sloane had been unseated for treating, he was rechosen, and the question of his eligibility was discussed in the House. A large party of his friends wished him to retain his seat, and *they* proposed as a motion "that Mr. Sloane is capable of serving in this present Parliament for the said borough." And this motion was negatived on division by 144 to 112. The majority in negativing this motion merely declared that Mr. Sloane was not duly elected, and was at that time ineligible. The particular words used by those who framed the motion were probably intended to assert no more than that Mr. Sloane was well elected, and could therefore serve in the present Parliament. 13 Journ. 251.

In the *Stockbridge case* in 1689, the House of Commons appear to have assumed that they had the power of excluding a person from the representation of a place for the remainder of the Parliament. Mr. Montague was petitioned against for bribery, and the committee of privileges reported the evidence to the House, and their resolution that W. M. was not duly elected. The House agreed with this resolution, and resolved further, "That Wm. Montague, Esq., be disabled from being elected a burgess to serve in this present Parliament for the borough of *Stockbridge*." 10 Journ. 286.

The same rule applies to a candidate whose conduct has not been investigated; *New Malton*, 1808, Minutes; *Wimborne*, C. & D. 239; 2nd *Horsham*, 1848; 2nd *Wimborne*, 1848; 2nd *Clitheroe*, 1853.

The effect of the decision of a committee that a candidate has been guilty, by himself or his agents, of bribery, treating, or undue influence, now creates a much more extensive disqualification. The 5 & 6 Vict. c. 102, s. 22, created a similar disqualification in the Parliament, but only, in cases of treating, when the candidate was cognisant of it, or paid the expenses (a).

The question of the power of a committee to inquire into what took place at the former election is still of importance, as far as the case of the candidate is concerned.

It must be remembered, that is only when the second election follows upon a void election, that this inquiry can take place. If a good election were to intervene between the one declared void for corrupt practices and the one afterwards petitioned against, the committee would have no jurisdiction to inquire into what was done at the first election; because the first election did not form any part of the void election. If a member not petitioned against after a general election, were afterwards to vacate his seat and be again elected for the same place, it would not be competent for the committee, in the event of a petition against the second election, to hear any charges connected with the proceedings at the first.

(a) The 49 Geo. 3, c. 118, incapacitated a person purchasing the return, for the remainder of the Parliament.

So also if, upon the death of a member, a person who had been a candidate when such member was elected, were to be himself returned for the place, no inquiry could take place as to whether corrupt practices had been committed by him or his agents at the first election. Although the commission of corrupt practices disqualifies for the remainder of the Parliament, it does so, only after a declaration of guilt by a committee. And the candidate, in the case here supposed, had no such declaration against him at the time he stood as a candidate upon the second election, which was entirely distinct both in law and fact from the first.

It has been already mentioned, that in one case a committee allowed an inquiry to take place into the proceedings of a former election; *Dungarvan*, 1854. This course seems to have been adopted in consequence of the construction put upon one of the repealed sections of the 5 & 6 Vict. c. 102. The 22nd section of that act provided, "that every candidate for any county, &c., who should by himself, or for or with any person, or in any manner, directly or indirectly, give or provide, or cause or knowingly allow to be given or provided, wholly or partly at his expense, or pay wholly or in part any expenses incurred for any meat, &c., at any time either before, during, or after any such election, &c., should be incapable of being elected or sitting in Parliament for that county, &c., during the Parliament for which such election should be holden." It will be seen that the language of this enactment differs somewhat from that of the 36th section of the new act. The wording of the enactment in the former section was, that every candidate who shall treat shall be incapable of sitting, &c., and not, every candidate who

ll be declared guilty of treating &c. There can no doubt that the Legislature intended the same in each case. The *Dungarvan* committee seem to have held, that under this section, they would be bound to inquire whether the candidate had been guilty of treating at *any* previous election during the same Parliament. In the preceding year an attempt had been made to induce another committee to enter upon a similar inquiry, but without success; *Durham*, 1853. The facts were as follow: Mr. Granger, Mr. Atherton, and Lord Adolphus Vane were candidates, at the time of the general election in July, 1852, to represent the county of Durham. The two former were returned. After his election, Mr. Granger died (*a*), whereupon another writ was issued to fill up the vacancy created, and a new election was held in December, 1852, at which Lord Adolphus Vane and Mr. Fenwick were the candidates, and the former was returned. A petition was then presented against this election of Lord Adolphus Vane, in which petition were contained allegations that Lord Adolphus Vane had, by himself and his agents, been guilty of bribery and treating before and after the election in July, 1852; and that he was thereby rendered incapable and incapacitated to sit in this present Parliament. The petition then went on to allege bribery and treating on the part of Lord A. V. and his agents before the election in December. When the case came on for trial before the committee, it was proposed on behalf of the petitioners, to go into evidence with

^a A petition was presented against this return, praying that a writ be issued for Lord Adolphus Vane, but it was withdrawn, and the writ then issued.

regard to bribery and treating committed at the election in July: this was objected to, the matter was argued, and the committee came to the resolution, "That counsel are not entitled to go into acts of bribery and treating, alleged to have been committed at the election for the city of *Durham* in July, 1852." The counsel for the petitioners requested that they might again be allowed to argue the question, so far as the admissibility of evidence of treating was concerned; this was done at considerable length, but the committee adhered to their former resolution, and excluded all evidence with regard to corrupt transactions at the former election (a).

In the *Dungarvan* case the facts were these: At the time of the general election in July, 1852, Mr. Maguire and Mr. O'Flaherty were the candidates, and the former was returned. A petition against this election and return was afterwards presented by Mr. O'Flaherty, containing charges of bribery and treating, alleging also a want of sufficient property qualification on the part of the sitting member, and praying a scrutiny. This petition was afterwards withdrawn by the petitioner, before any committee was appointed to try it (b). On the same day on which the petition was so withdrawn the following document was signed (c):

(a) Printed Mins. of Proceedings.

(b) It was alleged before the committee in 1854, that a committee had been nominated, but upon referring to the Journals it is clear that no committee had been appointed. Had a committee been once sworn, and they are not appointed until they are sworn, the petition could not have been withdrawn.

(c) Mins. p. 69.

12th April, 1853.

"I have this day entered into an honorable engagement with Mr. E. O'Flaherty, that in consideration of the petition now pending against me being withdrawn, I will accept the Chiltern Hundreds prior to the close of this session, and in time for a new writ to be moved for the borough of *Dun-
garvan*. I solemnly declare and promise that no circumstance, whatever circumstance, shall prevent me from fulfilling this obligation, which, as a man of honor I am bound under any contingency to discharge.

"J. F. MAGUIRE."

"I am witness to this agreement, which I consider Mr. Maguire is honorably bound to fulfil.

"G. H. M."

In consequence of this arrangement, Mr. Maguire continued to represent the borough until the close of the session of 1853, when he vacated his seat by accepting the Chiltern Hundreds, and a fresh writ issued on the 16th of August. Mr. Maguire and Mr. Gregory were the candidates at this second election, and the former was again returned. A petition was then presented by the unsuccessful candidate praying the seat, and alleging the presentation of the former petition; its subsequent withdrawal by reason of the compromise; that, in consequence thereof, the charges of bribery and treating at the election in July, 1852, contained in the petition, had not been inquired into; that notice had been given to the electors of such

compromise, and of the bribery and treating alleged to have taken place at the former election ; and there were further allegations affecting the election in August, upon which no evidence was given. When the case was being opened, a discussion took place as to whether it was competent for the committee to inquire into cases of bribery or treating in connection with the election of 1852. After argument, the committee decided "that the counsel for the petitioners be allowed to go into evidence in support of the allegations of the petition (a) relative to the transactions which took place at the election for 1852, which are charged in the petition as rendering the sitting member incapacitated and ineligible to serve in this present Parliament, and not qualified as a candidate, or entitled to be returned at the last election in 1853" (a). Upon a witness being asked a question relative to a charge of bribery at the election in 1852, the counsel for the sitting member objected to any inquiry then taking place into that matter ; that these charges were contained in the former petition of O'Flaherty, which had been withdrawn ; and that the resolution of the previous day could only be acted on with regard to treating. The committee resolved : "That the counsel for the petitioner proceed with evidence to establish the charge of corrupt *treating* at the election of 1852, and that the consideration of the admissibility of evidence as to

(a) It is remarkable that this petition, though it stated the circumstances of the compromise, and the notice to the electors, and went at great length into other circumstances, contained no allegations that either bribery or treating had taken place at the election in 1852. See Journals of 1854.

the charges of *bribery* at that election be reserved until the part of the case as to treating be first heard, and that the last answer of the witness be expunged, as at present not admissible."

Evidence was then given of a great deal of treating by the agents of Mr. Maguire at the election in 1852, the committee always refusing to allow any questions to be put with regard to *money* bribery (*a*). A case of treating, by the giving of a supper after the election, was also proved, in which the sitting member was personally implicated (*b*). The chairman of the committee stated on the third day of the inquiry, "that since yesterday, the committee had considered the legal question that was under their consideration on a former day, and that it appeared to them that they could not go into the question of *bribery* at the election of 1852; and that there was nothing which seemed to blend the election of 1852 with the election of 1853, so as to enable them to treat it as one election." They determined, however, to hear arguments upon what effect the *compromise* might have had in making this an exceptional case. Evidence was then produced on the subject of the compromise. This evidence, though very conflicting in some parts, appears to substantiate those facts already stated. At the close of it, the petitioner's counsel contended that he was at liberty, in consequence of the compromise which had been

(a) Minutes, *passim*.

(b) As to this supper, the committee reported, as has been before observed upon, that it was not given for the purpose of corruptly influencing or rewarding the voters. *Ante*, p. 136.

proved, to give evidence of *bribery* at the former election. The chairman stated that he should look into the statutes, and on the following day the committee again resolved: "That the counsel for the petitioner is not at liberty to go into evidence to establish the charges of acts of *bribery with money*, alleged to have taken place at the election of 1852." Further evidence was then given on the subject of treating at that election, and the committee ultimately came to the following resolutions, upon some parts of which observations have already been made:—

1. "That J. F. M. Esq. is duly elected."

2. "That it was proved to your committee that a supper given after the election of 1852, on the evening of the day of polling, was ordered by the agents of Mr. Maguire *previous* to the election, and afterwards paid for by him, and of which several of the persons who voted for Mr. Maguire, partook."

3. "That it did not appear to the committee that this supper was given for the purpose of corruptly influencing, or corruptly rewarding any voter or other person."

4. "That previous to and during the election of 1852, several tierces of porter were ordered and paid for by James Boland, and supplied for the use of the tenants and voters on different town lands, who were the friends and supporters of Mr. Maguire, and that the said James Boland was the person principally entrusted with the payment of the expenses of the election on behalf Mr. Maguire."

5. "That the order, payment and supply of this porter, were without the knowledge of Mr. Maguire,

and neither authorised or knowingly allowed by him" (a).

6. "That from the proceedings before the committee, they think it right to draw the attention of the House to the unsatisfactory state of the law with regard to the withdrawal of petitions, which have been presented against sitting members, and the jurisdiction of the committee to inquire into the charges of bribery and treating at an election, previous to that which is directly in issue. It appears that a petition against an election for this borough in 1852, and intended to have been prosecuted, and including amongst other charges, bribery and treating was presented, and afterwards withdrawn, without any fraudulent purpose, but upon a private arrangement not sanctioned by law ; and the effect of this compromise has been to *compel* the committee in this inquiry to enter upon a limited and unsatisfactory examination of the allegations in the petition referred to them ; the existing law (as they have considered) only enabling them to investigate charges of *corrupt treating* at the first election, but compelling them to exclude evidence of acts of bribery, as contradistinguished from corrupt treating. It appears to the committee that, under the special circumstances, they were bound to limit their inquiry to charges falling within the 22nd section of the 5 & 6 Vict. c. 102, which is confined to corrupt treating, and the confusion and contradiction of the decisions of other committees, as to the question of agency and consequent liability of

(a) The committee divided upon the resolutions numbered 3 and 5, and they were carried by three to two.

the principal in cases of treating (a), rendered it still more embarrassing for the committee to deal with the evidence in this case, when the effect of their decision involves a disability during the remainder of the present Parliament."

7. "That it appears to the committee that the disability created by the peculiar language of the 5 & 6 Vict. c. 102, s. 22, was intended to be imposed only in the cases in which the candidate by his own act, his own suggestion, his intentional allowance, or

(a) There can be no question that the decisions, or rather the *verdicts* of several committees in cases where treating by agents was alleged, have been very unsatisfactory. But it is believed that in no case has there been a decision, that a candidate was not responsible for the acts of his agent, even in cases where he has not authorised those acts. In giving their decisions, committees have seldom stated what facts they considered proved, and therefore it becomes impossible to distinguish their decision on the law from their finding on the facts. Committees may often be influenced like juries, by feelings of compassion towards a sitting member, who may long have represented the same place in Parliament, and against whom a charge of bribery or treating is brought. If such a charge were not of a very serious character, and did not affect the sitting member personally, it would excite no great surprise nor any regret, if under such circumstances the committee were to uphold the election. It would not be right, however, to assert, that such a committee had come to the conclusion, that treating by an agent did not disqualify. In the criminal courts of this country, prisoners are often acquitted from motives of compassion, when the jury consider the charge trivial, or the prosecution harsh and unkind, and the Judge may often sympathise with such verdicts, but there is no fear that on that account any confusion will be introduced into the administration of the criminal law, because the law will have been stated to the jury by the Judge, as embracing the very case upon which a verdict of acquittal is afterwards returned.

unequivocal adoption, made himself a party or privy to the act of corrupt treating" (a).

The *sixth* of the resolutions, so reported, discloses the reasons why the committee entered upon a long investigation into the proceedings at an election, which, according to their own resolution of the 25th March, was in no way *blended* with the election then petitioned against, "so as to enable them to treat it as one election." And *first* as to the withdrawal of petitions. The law is no doubt in a very unsatisfactory state upon that subject; but that did not give this committee any jurisdiction to entertain the questions connected with the former election and the subsequent compromise. It was entirely a matter for a committee of privilege. A special committee should have been appointed, as in the cases of *Durham*, *Berwick-upon-Tweed*, and *Norwich*, in 1853, to inquire into the circumstances connected with such withdrawal. It is not because certain matters are alleged in a petition, that therefore a committee are bound to entertain them. If the matters alleged do not affect the validity of the election petitioned against, or the right of the several parties to be returned, they are irrelevant to the inquiry, and cease to be matters that the committee are sworn to try. Now the whole history of the withdrawal of the petition, and the compromise in April, 1853, could in no way affect the validity of the election in August. If, indeed, the facts had been similar to those in the *Nottingham case* in 1842 (b), where a sum of money (4,000*l.*) was paid upon the

(a) This resolution was carried in committee by three to two. *Minutes.*

(b) B. & Arn. 146.

compromise of the petition against the first election,—the conditions being that, on such petition being withdrawn, and such sum of money paid, one of the seats was to be forthwith vacated, that the unsuccessful candidate should be returned without any opposition,—then a very different charge would have arisen. It might then with justice have been contended, that the whole transaction amounted to the purchase of the seat upon the second election, which would have avoided that return under the 49 Geo. 3, c. 118, or now by 17 & 18 Vict. c. 102, s. 2. No part of the arrangement with regard to the compromise in the *Dungarvan case* at all affected the proceedings at the second election, and though the committee thought themselves “compelled, by this compromise, to enter upon a limited and unsatisfactory examination of the allegations in the petition referred to them,” it seems clear that they exceeded their jurisdiction in entertaining the question at all.

Secondly. As to the right of the committee to inquire into charges of treating at the former election. The committee from the first seem to have refused to hear any evidence of bribery, for the reason that the first election was quite unconnected with the second. But they considered that they were bound to hear evidence of treating because the 5 & 6 Vict. c. 102, s. 22, created a disability, not only for the election at which the treating took place, but also for every election during the same Parliament (*a*). The reso-

(*a*) The distinction drawn by the committee between bribery and treating was to a certain extent correct. The 49 Geo. 3, c. 118, incapacitated the member returned for the remainder of the Parliament; but that act probably

of the committee, "that they would not hear evidence of bribery, affirmed the principle that the proceedings of one election cannot be inquired into at another; but it would appear that the committee considered that charges of treating, falling within the act 5 & 6 Vict. c. 102, might be inquired into at any time during the continuance of the Parliament, if an occasion for presenting a petition with regard to the place should occur. In answer to that it is submitted, that when once the time for petitioning against an election has elapsed, if no petition has been presented, the matters of that election, so far as the validity of the return is considered, are at rest for ever; and when a petition has been presented and withdrawn, it is the same as if no petition had ever been presented. The 5 & 6 Vict. c. 102, s. 22, ought to have been read in connection with the established rules of the common law, and the statute for the trial of petitions. And when the act said, that a candidate who was treated was ineligible for the rest of the Parliament, there can be no doubt that the Legislature meant to say, that a candidate "proved to be guilty," or as in the new act, "declared to be guilty," should thereupon be incapacitated for the remainder of the Parliament. The 17 & 18 Vict. c. 102, s. 36, will probably remove any doubts on this subject for the future. The question, however, might still be raised again.

This question with regard to the times at which

applied only to cases where the member purchased the borough, and not to cases of bribery of voters. It was never contended that the incapacity under the 49 Geo. 3, c. 118, existed before the facts had been adjudicated upon by a committee.

it is competent for an election committee to inquire into corrupt practices, suggests another matter of considerable public importance, and that is, how far the House of Commons has power to order the issue of a writ for a new election, while a petition not claiming the seat, but alleging corrupt practices, is pending against the former one. The connection of this with the other matters here considered will be apparent from what took place in the *Southampton case*, 1853.

In the month of December, 1852, Sir A. Cockburn, who had been returned as one of the members for the borough of Southampton in July in that year, was appointed to the office of Attorney General. He thereupon, by force of the provisions of 6 Anne, c. 7, s. 26, immediately vacated his seat; but was capable of re-election so soon as a new writ should issue. A petition, however, had been presented against his return and that of the other member, which alleged bribery and treating against the sitting members and their agents, but did not claim the seats for the unsuccessful candidates. On the 29th December a new writ for Southampton was moved for in the room of Sir A. C., who had, since his return, accepted the office aforesaid. The opinion of the Speaker was then requested, whether a new writ could issue under these circumstances. The Speaker is reported to have said (a), "that in the case of an election petition complaining of an undue return, or of the return of a member in consequence of bribery, but not claiming the seat for another person, it was competent for the House to issue a new writ; but in the case of a peti-

(a) 123 Hansard, 1742.

tion complaining of the undue return of a member, and claiming the seat for another person, it was not competent for the House to issue a new writ pending the petition, inasmuch as the House in that case could not know which of the two members had been duly elected."

An honorable member (*a*) then observed, "that as the petition merely prayed that the election should be declared void, it did not appear to him that any injury could be done to the petitioners by the issuing of a new writ, because the opposing candidate had only to serve a notice that the honorable and learned gentleman was disqualified for sitting in that House in consequence of having been guilty of bribery, and even if he should afterwards be found guilty of this charge by the committee who had been appointed to try the petition, he would consequently be disqualified, and the person opposing him would be declared the sitting member." It was also stated by the honorable member (*b*) who moved that the writ should issue, "that he had been requested by Sir A. C. to say, that he would not have consented to vacate his seat, if he had not felt certain that the persons who had made the charge—which he believed was perfectly unfounded—were competent to renew the charge in the event of his being re-elected."

The writ for a fresh election accordingly issued. The election took place in January, 1853. Sir A. Cockburn and Mr. B. Cochrane were the candidates. In accordance with the opinion expressed in the

(*a*) Mr. Fitzstephen French.

(*b*) Mr. Hayter.

House of Commons, that there might be a retroactive species of disqualification, notice was given to the electors of the alleged bribery and treating at the former election in July, 1852. Sir A. C. was again returned, and a petition was presented against this return, setting forth charges of bribery and treating at the former election; the fact that a petition was then pending against the first election, and had been so pending at the time of the last election; that notice had been given to the electors of these facts, and that the learned Attorney General was ineligible, and the petitioner ought to have been returned. All the allegations of corrupt practices in this petition referred to the election in July.

When the first petition came on to be tried in the month of February, 1853, Sir A. Cockburn appeared before the committee, and stated (a) "That the petition before the committee affected the return of July, 1852, the period of the general election; but that such was not the return under and by virtue of which he was returned for the borough, inasmuch as having, since that return, accepted the office of her Majesty's Attorney General, he had been brought within the provisions of the 6 Anne, c. 7, s. 26; that he had in consequence vacated his seat, and was now sitting in Parliament under and by virtue of a return to a new writ issued under the same section of the said act; that at the time of his acceptance of the office this petition was pending; but that, as the seat had not been claimed in the petition, a new writ had been issued at once, on the ground that the said 26th

(a) 2 P. R. & D. 47.

tion operated without any restraint or qualification, though the member were dead; that when the writ sued, it was open to the petitioners against the first return to take advantage of any matter of exception that return upon the new election; that such exception had been taken in this case, and a petition had been presented against the last return of January, 1853, but that such petition had not been referred to this committee: that the anomaly of the case was this; that whatever might be the decision of this committee, yet that such decision, whether declaring him duly elected or the contrary, would not affect his seat, as he must continue to sit until after the trial of the other petition. That he therefore appeared under protest before the committee with the same counsel as agents as appeared for the other sitting member), so that he might not be affected by either having withdrawn himself, or not having appeared before the committee." The chairman then intimated, that the committee were of opinion, that the petition having been referred to them by the House, they must proceed in the usual way, in the absence of any specific application being made to them. The case accordingly went on, and the sitting members were declared duly elected. There can be no question that the argument of the learned Attorney General was quite correct, that if the committee on the first petition had found him guilty by himself or as agents of bribery or treating, it could not have in any degree affected the validity of the return on the second election. Such a decision in the month of February, 1853, could not have had a retrospective effect so as to have rendered him ineligible at an elec-

tion held in the previous month of January. But it seems that it was conceded by the learned Attorney General, that it would be open to the committee upon the second petition, to inquire into the circumstances attending the election in July. Had such an attempt been made by the second committee, it is not probable that the honorable and learned member would have been concluded from contesting their jurisdiction to inquire into such matters, by reason of his protest before the committee in February. As the second petition was withdrawn before the appointment of a committee, the point was not then decided. But there can be hardly any doubt that had the question been raised, the counsel for Sir A. C. could have prevented any further discussion on the subject. *First*, because a competent tribunal having decided that he was well returned in July, the matter was *res judicata*, and *nemo debet bis vexari*; and *secondly*, because the election in January was quite separate and distinct from the election in July, the proceedings of the one being in no degree blended with that of the other; and, therefore, what took place in July was irrelevant on an inquiry into an election in January. Supposing the second committee had been competent to inquire, how is the retroactive operation of the decision of such committee, as was pointed at in the House of Commons, to be reconciled with legal principles? An election takes place in January; notice is then given that from what took place in the July previous, a committee, to be appointed in February, will decide something which will affect the eligibility in January. Now the ineligibility is the result and consequence of the finding of the committee. From the moment of such

ing, the candidate is disqualified for that particular
ce for the rest of the Parliament. According to
view taken when the *Southampton* writ was issued,
ould be competent for a committee to decide that
member, who had been for six years the repre-
tative of a borough, had been during all that period
qualified, ineligible, and no member of Parliament,
within the last year of such Parliament it had be-
ne necessary for him to vacate his seat, and he
on being returned had been petitioned against.
ith great respect for the high position of those who
re contended that this is so, it is submitted that
ch is not the law, and has never been recognised as
ch. And that committees have never inquired into
e proceedings of a former election, upon petition
against a subsequent one, except when the second
ction was held to form part of the first by reason
no valid return having been made to the first writ.
Does it then follow that a member can escape from
e consequences of an election petition when the seat
not claimed, by the acceptance of the Chiltern
undreds, or by taking office under the Crown?
uch would most undoubtedly be the consequence
the House of Commons were to recognise the prin-
ple, that they have power to order a writ to issue
r a new election while there is a petition depending
against the former return. It is proposed, therefore,
consider the soundness of the distinction taken in
the House of Commons between petitions praying a
oid election only, and those claiming the seat. And
ith all respect for the authority of those who recom-
ended that the writ should issue, it is submitted
ith much confidence, that the proceeding was erro-

neous in principle, and contrary to law. It was admitted that if the petition had claimed the seat no fresh writ could have gone (*a*), but it was supposed that if there were no claims of another candidate to be attended to, the House had power to issue a fresh writ although there were at the time serious charges of bribery and treating depending against the sitting member.

In the *first* place, the House had no means of knowing, and had no power of judging what were the allegations in the petition (*b*). When once an election petition has been received by the House with a sufficient recognizance duly entered into upon it, the duties of the House are thenceforth merely ministerial with regard to it. Each step that has to be taken by them has been strictly defined by statute. They have no right to open the petition, or to criticise its contents. It remains in the hands of the House merely as a depositary, until the proper statutable tribunal has been nominated to try that petition; and that tribunal alone is competent to say whether the seat is claimed in the petition, or not. This is no trivial objection, for the whole benefits conferred by the Grenville Act, and the subsequent legislation on this subject would be done away with, if the House were

(*a*) In the case of Mr. Keogh, who was at the same time made Solicitor General for Ireland, no writ was allowed to issue to the borough of Athlone, until the petition which claimed the seat had been tried and determined.

(*b*) With the greatest respect for what so experienced a person as the present Speaker of the House of Commons is reported to have said, it is submitted that the *House* can never in any case be able to say of its own knowledge whether any candidate has been duly elected.

now again to interfere as a House in election petitions, and to investigate them, and discuss their merits (a). It is, no doubt, a great inconvenience, that her Majesty and the public should be deprived of the services of a useful officer in Parliament for a considerable period of time, in a case where there are no sufficient grounds for a petition, and where no other candidate prefers a claim to the seat. This inconvenience, however, ought to be remedied by placing greater restraint upon the power of petitioning, and by providing some means of punishing those who bring charges of so grave a character lightly, and without probable cause. But what is this inconvenience as compared with the evil which must necessarily result, from allowing a fresh

(a) Whenever an attempt of this kind has been made the greatest jealousy has always been shown on the part of the House. An instance of this may be seen from what took place on Mr. Horner's motion in 1808, to discharge the order for considering an election petition complaining of an undue election for the borough of *Great Grimsby*, on the ground that the petitioner had not complied with the standing order (then in existence), by delivering in a statement of his qualification within fifteen days after notice. The Solicitor General (Sir Thomas Plumer), agreed, that this course was in accordance with the practice of the House antecedent to the passing of the Grenville Act, "but he contended that, since the enactment of that statute, which transferred all jurisdiction on matters of controverted elections from the House to the committees chosen under it, it was *not competent* to the House to discharge any order for a committee to determine the merits of an election, in any other manner than as prescribed by the act. The whole jurisdiction rested with the committee, which alone was to decide upon the question respecting the qualification, and therefore the House could not have the power to discharge the order pursuant to the motion of the honourable gentleman." The motion was negatived, 10 Hansard, p. 698.

writ to issue while the charges of bribery remain undetermined?

Is it to be allowed that it shall be in the power of the Crown, or rather of a minister, to obviate the serious consequences of such an inquiry by conferring an office of profit, or the Chiltern Hundreds, upon an individual so accused, and then demanding that a fresh writ should issue? It is true that the inquiry might still take place, for unless the petition were withdrawn a committee must be appointed to investigate the charges in the petition. Their decision, however, would have no effect upon the eligibility of such person, as has been already pointed out; and the services of a person so accused, and perhaps convicted of corrupt practices would still be secured in Parliament (a). The new statute makes no change in this respect, for though it enacts that a declaration of guilt by a committee shall disqualify for the rest of the Parliament, the effects of such declaration can only operate from the date of the decision, and cannot act retrospectively so as to affect the validity of a return, which has been completed before the declaration was pronounced.

But, *secondly*, this practice is as contrary to law as it is objectionable in principle. The 26th section of 6 Ann. c. 7, provides, "That if any person, being chosen a member of the House of Commons, shall

(a) It need hardly be observed, that it is not for a moment suggested that there was any desire to prevent inquiry into the *Southampton* election of 1852. On the contrary, it is clear that the opinion then prevailed generally, that no evil could attend the issuing of the writ, because it would be open to the second committee to entertain the question.

accept any office of profit from the Crown during such time as he shall continue a member, his election shall be void, and is hereby declared to be void, and a new writ shall issue for a new election, *as if such person so accepting office was naturally dead*. Provided nevertheless, that such person shall be capable of being again elected, as if his place had not become void as aforesaid."

The whole of this section must be considered together. The election, from the moment of the acceptance of the office, is void as to the member returned, and he can no longer sit or vote as a member of Parliament upon such election. But how is the new writ to issue? It is to issue as if such person were naturally *dead*. Suppose, then, a seat to become void by the natural death of the member returned, what is the power of the House of Commons to order a fresh writ to issue, upon an election petition, praying for a void election only, where depending against such member at the time of his death? This is clearly and positively provided for by a statute, which the House of Commons is bound to obey. The 11 & 12 Vict. c. 98, s. 18, provides, that in the case of the *death* of a sitting member whose return is petitioned against, the Speaker, upon receiving notice of such death, is to give information in the way therein provided, to enable electors to defend such return; and all proceedings upon such petition are in the meantime suspended. It is obvious that it is only when the seat is claimed for the unsuccessful candidate, that electors will be at the trouble and expense of defending the return of a member, who has died since his election. But the act goes on to provide for

the event of electors not coming in to defend (a). When such is the case, and it has been duly notified that the member returned is dead, and that no one appears to defend the return, the House has still no power to discharge the petition, whether the seat be claimed or not, but the petition must be disposed of by the only tribunal competent so to do. In order to prevent unnecessary delay in the issuing of the writ under such circumstances, it is provided, "that it shall not be necessary to insert such petition at the bottom of the then list of petitions, but the general committee of elections shall meet for choosing the select committee to try such petition, as soon as conveniently may be after the expiration of the time allowed for parties to come in to defend such election or return, and not less than one day's notice of the time and place appointed for choosing such committee shall be given in the votes; and in such case it shall not be necessary to deliver to the clerk of the general committee of elections a list of the voters intended to be objected to, as hereinafter is required in other cases." (b)

There is nowhere, in any part of these provisions, any distinction made between petitions claiming the seats, and those that do not. In every case where a petition has been presented against the election of a member who has died after his return, these forms must be gone through, supposing the petition is not withdrawn; and until the select committee to be appointed has pronounced a decision upon the validity

(a) 11 & 12 Vict. c. 98, s. 47.

(b) *Ibid.* s. 52.

of such return, no fresh writ can issue. Now, to apply this to the case of a member vacating his seat by the acceptance of office. The "new writ shall issue for a new election, *as if* such person were naturally dead" (a). It has been shown, that no writ can issue when a member is dead, if a petition is pending against his return, and therefore the conclusion is irresistible, that in the case of a seat avoided by the acceptance of office, no fresh writ can issue until the petition be disposed of in the way provided for by the act for the trial of election petitions. And it is therefore submitted, that the distinction pointed out by the honorable and learned member before the *Southampton* committee, *viz.*, "that *if the seat is not claimed* in the petition, a new writ may issue, on the ground that the said 26th section operates without any restraint or qualification, though the member were dead" (b), is not supported by authority, but is at variance with the enactments of the 11 & 12 Vict. c. 98.

Another argument may also be advanced to show, that it is contrary to the ordinary policy of the law to permit a writ to issue under such circumstances. If a member, against whom a petition was depending, was called by a writ of summons to the House of Lords, no writ could be issued for a new election to fill the vacancy, until the petition was disposed of by a select committee; and that, whether the petition was allowed or did not claim the seat (c). So also, the act, which enables the Speaker of the House of Commons

(a) 6 Ann. c. 7, s. 26.

(b) 2 P. R. & D. 48.

(c) 11 & 12 Vict. c. 98, ss. 18, 47 and 52.

to issue his warrant to the clerk of the Crown to make out new writs for elections during a recess of the House, to supply vacancies created by members dying, or becoming peers of Great Britain, prohibits him from doing so, if *any* petition was depending against the election or return of such members, at the time of the last prorogation, or adjournment of the House (a). The Speaker has the same power in the case of members being declared bankrupts (b). In none of these cases is there any distinction to be found between the different descriptions of election petitions. It may be said, that, the Speaker has not been intrusted by the Legislature with a power to examine into the allegations of the petition; that is so, but all such power is also expressly taken away from the House itself since the passing of the Grenville Act. The mistake seems to have arisen from looking at election petitions, as in the nature of private suits between party and party, in which the sitting member and the petitioners were the only persons interested, and that if the seat, the object in dispute, was vacant, it was not necessary that any further inquiry should take place.

Notice of Disqualification.] The rule has long been recognised in Parliament, that whenever one candidate at an election is disqualified from serving for that place in Parliament, if such disqualification is known to the electors, all votes given for him with such knowledge, will be considered as thrown away; and the other candidate who may have a minority of votes

(a) 24 Geo. 3, c. 26, ss. 2 and 4.

(b) 52 Geo. 3, c. 144.

at the election, will then be in a position to claim the seat (a). This disqualification is usually made known by handing to the electors personally, and before they come to the poll, a statement regarding it; or by publishing placards and notices upon the walls of the place, and the doors of the polling booths. All that is necessary is to affect the voters, who have supported the disqualified candidate with notice of the disqualification.

When once notice of the disqualification has been given, the electors are bound to take notice of it; should the member alleged to be ineligible deny the facts charged against him, the voters who support him, trusting in such denial, will lose their franchise, if it should turn out upon inquiry that the candidate was in truth disqualified at the time of the election (b). The two matters for the consideration for the committee are: 1st. Did the disqualification exist at the time of the election? 2ndly. Was sufficient notice of it given to the electors?

Declaration of Bribery, &c.] The existence of the disqualification is usually proved by the production of the decision of the committee, declaring the candidate to have been guilty, by himself or his agents, of bribery, treating, or undue influence at some former election, or the same place, during the Parliament. When there is an express decision to that effect, the production of such resolution will be conclusive; *Kirkcud-*

(a) This principle has been long recognised in the courts of law; *R. v. Hawkins*, 10 East, 211; *Cluridge v. Evelyn*, 5 B. & A. 81.

(b) 2nd *Southwark*, Cliff. 130; *Leominster*, 1827, Rog. App. x.; *Belfast*, F. & F. 601.

bright, 1 Lud. 72. In the 2nd *Peterborough* case, 1853, the committee reported, "That G. H. Whalley, Esq., *having been declared*, by a committee of the House of Commons, to have been guilty of treating at the preceding election for the city of *Peterborough*, and the election for the said city having been avoided, was incapable of being elected at the election which took place in consequence of such avoidance." And they reported that Mr. T. Hankey, who had given notice at the election of the ineligibility, was duly elected.

Resolution not express.] A good deal of difficulty was often experienced formerly, in consequence of the form of the resolution of the first committee. Until the passing of the 4 & 5 Vict. c. 57, committees used often to declare in their resolution no more, than, "That the last election was a void election." If the member unseated was again returned, the second committee had to endeavour to ascertain, what were the grounds upon which the first committee declared the election void. This could only be done by looking at the petition, and the minutes of the evidence given in support of the allegations thereof. If the petition contained no other charges but those of bribery and treating, the second committee had no difficulty in coming to the conclusion, that the first election was avoided for those offences, and that the sitting member was thereby ineligible; *Honiton*, 3 Lud. 165; 2nd *Canterbury*, Cliff. 361. If notice had, under these circumstances, been given to the electors, that the candidate had been unseated for corrupt practices, there seems to be no doubt that the electors would have voted at their peril, although the resolution was silent as to the grounds on which the election was declared void.

When the petition, in addition to the charges of bribery and treating, contained other allegations which tended only to make the election void, and did not show any future disqualification upon the person unseated, the committee had often considerable difficulty in ascertaining the grounds of the decision. If, upon perusal of the minutes, they saw that no evidence had been given on the first inquiry upon any other matters than bribery and treating, they would be certain what were the grounds of the decision; but, if any evidence was given upon the other charges before the first committee, the second would be bound to hold the second election, for they could not have any means of ascertaining, on which of the many allegations in the petition, the first election was declared void; and *Norwich*, 3 Lud. 487; 2nd *Dungarvan*, K. & O. 7; and *Maidstone*, F. & F. 673. These difficulties are not likely to arise at the present day, for now, whenever an election is declared void, the committee invariably accompany that declaration with a special report of the grounds of their decision, and of the different matters which have been proved before them (a).

When no resolution come to.] Whether votes, given for a candidate, who is accused of bribery or other corrupt practices, at the election then taking

(a) The *Carlisle* committee, 1848, expressed an opinion that a candidate unseated for treating within the 7 Wm. 3, 4, could stand again on the vacancy so created. This opinion, which was quite extra-judicial, is of little importance now, as since the new act there can be no question that a candidate, situated as Mr. Hodgson then was, is disqualified for the rest of the Parliament. There is not the least doubt, that he was also ineligible to fill the vacancy in 1848; 1 P. R. & D. 59.

place, or at the previous void election, but against whom there has been no decision of any committee or other competent tribunal, are to be considered as thrown away, is a question of great nicety, and one upon which a great diversity of opinion has at all times existed in the profession. The decisions of committees, moreover, on the subject are conflicting.

In some of the older cases, when election matters were discussed in the House of Commons, the seat was often given to the unsuccessful candidate at the election, when the sitting member was unseated for bribery. Thus in the *Bewdley case*, 1676 (a), the committee of privileges reported, "that the chief matter on which they grounded their opinion was the bribery of the sitting member to procure the voices of the electors; on which they had resolved that he was not duly elected, and that the petitioner was"—and the House agreed. In the case of *Mitchell*, 1690 (b), Mr. Rowe had 31 voices, and Mr. Courtney 20; six of Rowe's voters were struck off the poll on the scrutiny. The committee resolved, that Rowe was guilty of bribery; that he was not duly elected, and that H. Courtney was duly elected; and the House afterwards confirmed these resolutions. In the *Chippenham case*, 1692 (c), the House unseated Sir Basil Firebrass for bribery, and seated General Talmash, who was in a minority. In none of these cases was any notice given to the electors that their votes would be thrown away; and it does not appear, that the House acted on any principle in giving the

(a) 9 Journ. 397.

(b) 10 Journ. 469.

(c) 10 Journ. 637.

seat to the candidate in the minority. It is therefore necessary to turn to the cases which have been decided since the passing of the Grenville Act.

In the *Radnorshire case*, 1 Peck. 494, Mr. M. stated in his petition, that Mr. W. had been guilty of bribery at the election; and that he, having given notice thereof to the electors, was entitled to the return. The sitting member was declared to be duly elected. But the arguments which were used are given in a note to the case (a). Notice had been given to the electors of the sitting member having been guilty of treating during the course of the election. The distribution of the tickets (for refreshment), which was said to constitute the offence, was notorious, and they were received by the greater number of the electors. It was argued in this case, that the incapacity was inferred by the positive words of the act of 7 Wm. 3, c. 4; a law which every man was bound to take notice of; and moreover, that in this case, the electors themselves were partakers and accomplices in the crime; so that their knowledge of the fact was established in the fullest manner. The counsel for the sitting member insisted, that the incapacity must be such as to be conclusive upon the sitting member at the time of the notice given; namely such as was either inherent in his character or situation, as in the case of *Fife* (b), or had been already fixed upon him

(a) 1 Peck. 498.

(b) 1 Lud. 455, where General Skene was held to be disqualified by reason of his holding the office of Baggage Master to the Forces, and his opponent, Mr. Henderson, having given notice obtained the seat.

by formal proof and judicial determination, as in the cases of *Southwark* and *Canterbury* (a).

In the *Penryn* case (1819) (b), this question was fully argued, and the committee decided against the petitioner's claim for the seat. Notice had been given to each elector as he came to the poll, that Mr. Swann had been guilty of bribery at that election; and that their votes for him would be thrown away. It was argued for the petitioner, that the bribery was notorious throughout the borough, so much so, that no one was ignorant of it; that, to use the words of one of the witnesses, it was "in everybody's mouth;" that the incapacity existed by force of the 7 Wm. 3, c. 4, and that the case could not be distinguished from others cited, where notice of the incapacity had been given to the electors. For the sitting member it was contended, that the cases cited did not apply, because in those cases there had been a notoriety of fact, as well as of law; that in the case then under consideration, it was merely the charge of a fact done that was notorious, and not the fact itself; that a charge, even if true, was not in a shape to disqualify the candidate, till the judgment of a committee, or of a court of law had been had upon it. Whether a person is guilty of bribery or not, is a deduction of law, arising from certain facts, drawn by a court of competent jurisdiction; that here it was a charge only; and the fact could not be notorious without inquiry; and the judgment of the committee cannot refer back to the time of election to perfect the

(a) Clifford.

(b) Corb. & D. p. 55.

disqualification. The committee unseated Mr. Swann for the bribery; but they refused to give the seat to Mr. Anderdon, the petitioning candidate.

In the *Inverkeithing case*, 1819 (a), similar arguments were used, but though the committee unseated Mr. Campbell for bribery, they refused to give the vacant seat to Mr. Primrose, who had given notice of the bribery at the time of the election.

In the year 1848, the same point was considered upon two occasions, and the committees came to opposite conclusions. Though the matter in point of law was then the same as in the cases already cited, it arose in a different way. The demand of the seat in the two cases referred to, *viz.*, the 2nd *Horsham*, and the 2nd *Cheltenham*, was made upon a petition against an election following upon one previously declared void, and the matter in issue was the conduct of the candidate at the first election. So far as the eligibility of a person, who had been a candidate at both elections was concerned, they were to all intents and purposes one election; and the question, whether notice given at the second election, of bribery said to have been committed at the first, entitled the unsuccessful candidate to the seat, was precisely the same as if the whole had taken place at one election.

In the second *Cheltenham case*, 1848 (b), the facts were as follow:—The Hon. C. F. B., who had been unsuccessful at the general election in July 1847, petitioned against the return of Sir W. J., but as the claim of the seat which had been made in the petition

(a) Corb. & Dan. 182.

(b) 1 P. R. & D. 224.

was not persevered in, no recriminatory evidence was given against the petitioner, and no resolution was come to with regard to him. The election was declared void, and a new writ issued. The Hon. C. F. B. and Mr. A. G. were then the candidates at the election, which took place in June 1848. Very general notice was given to the electors by the friends of Mr. A. G., that the Hon. C. F. B. had committed acts of treating at the general election in 1847, and that he was thereby ineligible. The Hon. C. F. B. was returned, and was petitioned against on account of the treating alleged to have taken place at the election in 1847; and the seat was claimed for Mr. A. G. on account of the notice which had been given of the ineligibility of the sitting member. The committee *resolved*, "that the Hon. C. F. B., being a candidate at the election for the said borough held on the 30th of July, 1847, was, through his agents, guilty of treating at such election, and that the Hon. C. F. B., in consequence thereof, was, at the last election, held on the 29th of June, 1848, *incapable of being elected*, or sitting in Parliament, for the said borough." The seat was then claimed for Mr. A. G. It was admitted on behalf of the sitting member, that the notice of the ineligibility had been served upon a sufficient number of electors, supposing the sitting member to have been disqualified at the time of the election. An objection was then taken to the form of the notice, because it did not state the specific acts of bribery and treating alleged against Mr. B.; but the principal points relied upon were, that the facts could not be said to be notorious, that they had not been ascertained by any competent tribunal, and that the charge

self had been contradicted when made at the election. The committee refused to give the vacant seat to Mr. A. G. (a).

In the 2nd *Horsham*, 1848, the facts were similar to those in the *Cheltenham* case, and were proved in the same way. The committee resolved, "that Mr. F., being a candidate at the election for the borough of *Horsham*, held on the 29th of July, 1847, was by himself and his agents guilty of treating at such election; and that Mr. F., in consequence thereof, was, at the last election in June, 1848, *incapable of being elected*, or sitting in Parliament for the said borough.

The seat was then claimed for Lord E. H., who had been the unsuccessful candidate at the last election in June, 1848. The notice which had been given to the electors was the same in substance as the one used at the *Cheltenham* election; the arguments used were the same, but the committee came to a different conclusion, and gave the seat to the petitioner (b).

It is clearly impossible to reconcile these two decisions. They were decided within a week the one of the other, by tribunals of co-ordinate jurisdiction.

The 2nd *Clitheroe* case, 1853, was precisely similar

(a) The decision was not unanimous; on the question whether Mr. A. G. was duly elected, the committee divided. *Ayes*, 2: Capt. Harris, Sir W. Clay. *Noes*, 3: Mr. Roundel Palmer, Mr. Ogle, Mr. Thicknesse.

(b) Here the committee divided. *Ayes*, 3: Dr. Bowring, Mr. Bunbury, Mr. Monsell. *Noes*, 2: Hon. H. Corry, Mr. Branston. In this case the committee proceeded to strike off the votes of those who voted after receiving notice, as in a case of scrutiny. It is not necessary in such cases as these to deliver lists of the voters to be struck off. *Wavestock*, 1853, *infra*, "Scrutiny."

in its general facts to the *Horsham* and *Cheltenham cases* of 1848. The member returned at the general election was unseated for bribery and treating. A fresh writ issued; Mr. Aspinall, the unsuccessful candidate at the time of the general election, was returned, but was petitioned against by Mr. Fort, the other candidate at the second election. The petition set forth, that Mr. Aspinall was ineligible by reason of corrupt practices at the election in 1852 (a); that notice of such ineligibility had been given by the

(a) The allegation in the petition was, "That it was proved before the said select committee, and the fact was, and became open and notorious to all parties, that at the said election in July, 1852, the said J. Aspinall had been guilty of *corrupt practices*." An objection was taken by the counsel for the sitting member to any evidence of treating being given on this allegation. The committee resolved, "That under the general allegation contained in the petition of 'corrupt practices at the election of 1852, whereby the said J. A. was incapacitated and ineligible from sitting or being chosen to sit in this present Parliament for the said borough of *Clitheroe*,' it is competent to the petitioner to give evidence of bribery or corrupt treating under the 5 & 6 Vict. c. 102, at or previous to the election of 1852; but, inasmuch as the allegation of the petition, as regards that election, is confined to a charge of corrupt practices against Mr. A., without such specific mention of his agents as is contained in the subsequent allegation, with reference to the election of 1853, the committee are of opinion, that evidence of bribery and *corrupt* treating cannot be admitted under the terms of the petition, as regards the election of 1852, unless it shall be proved that such bribery or corrupt treating were committed by Mr. A. himself, or by an agent with his consent or knowledge." The committee probably excluded treating within the statute of Wm. 3, because the word "corrupt" is not used therein. All such distinctions are done away with by the new act. The allegations in the petition were very informally stated; and it may be questioned whether any evidence of treating should have been given under them.

petitioner, and that he ought to have been returned. The committee reported, "that Mr. Aspinall was not duly elected; that he, being a candidate at the election for the said borough held in July, 1852, was guilty of treating at such election." A claim of the seat was then made on the part of the petitioner, but the committee, after argument, refused to give the seat to him, and declared the election void. They made a special report to the House on the state of the law on this subject. "That from the proceedings before the committee, they think it right to draw the attention of the House to the unsatisfactory state of the law with regard to the effect of notice to the electors of disqualification, in the case of a candidate, who is returned by a majority of votes. By the common law, the principle seems to be firmly established, that where a candidate is in point of fact disqualified at the time of an election, all votes given for him with knowledge of the fact upon which such disqualification is founded must be considered as thrown away. This knowledge may be established either by distinct notice or by notoriety; and it will in all cases be inferred, that where the voter is aware of the facts, he is aware of the legal deduction from those facts, however intricate and doubtful they may be. It is obvious that on these principles it may be contended, that in all cases, without exception, where notice of disqualification is served on a sufficient number of voters by the majority, and where the fact of such disqualification existing at the time of the election is subsequently established, the candidate who was in a minority on the poll is entitled to the seat; and some cases before election committees appear to have been decided on principles which lead

inevitably to this conclusion. On the other hand, other cases point to the conclusion, that to give effect to the notice, the disqualification must be founded on some positive and definite fact, existing and established at the time of the polling, so as to lead to the fair inference of wilful perverseness on the part of the electors voting for the disqualified person. The committee (a), in deciding this case, have unanimously adopted the latter view, which they believe to be in accordance with the sound construction of the law, as well as with justice and reason ; at the same time they cannot but feel, that the cases are so contradictory, that future committees may, as previous committees have done, come to a different conclusion on the same state of facts ; and they consider it, therefore, most desirable that, as regards the elections of members of Parliament, the law should be distinctly defined by some statutory enactment. That the committee, while they do not consider it within their province to suggest the remedy which it may seem fit to the wisdom of Parliament to adopt, yet think it right to point out that, under the administration of the present law as sanctioned by some precedents, not only may injustice be done to constituencies by being represented by persons whom the majority of electors have deliberately rejected, but also that each individual voter may be placed in a position of hardship and difficulty, if upon the mere assertion of an opposing party that a disqualification exists, the truth or falsehood of which

(a) The committee consisted of Mr. G. A. Hamilton, *chairman*, Mr. I. Butt, Sir J. Duke, Mr. S. Laing, and Sir T. Herbert.

may have no means of ascertaining, he is to exercise his franchise at the risk of his vote being thrown away, on subsequent investigation, the existence of that disqualification should be established" (a). This solution, which it has been thought convenient to state at length, states very accurately the present state of the law with regard to the throwing away of votes on notice of alleged disqualification. The committee adopted the same view of the law as the *Cheltenham* committee in 1848. The committee say, that they consider "the fact creating the disqualification ought to be positive and definite, and existing and established at the time of the polling, so as to lead to the fair inference of *wilful perverseness* on the part of the electors voting for the disqualified person." If this be a correct view of the law, it ought to apply not only to cases where acts of bribery and treating are alleged to be the cause of disqualification, but also to cases where incapacity is created by want of sufficient property qualification, or by the tenure of an office.

In cases where a sitting member is unseated from want of legal qualification, the *facts* are seldom, if ever, known to the voters, to whom the notice is given. It often happens, that when the qualification is challenged at the election, a positive answer is given as to its sufficiency, and the candidate makes the ostensible declaration of its existence and value. How are electors to be satisfied of the accuracy of these statements? The facts exist, and are established, no doubt, at the time of polling; but if an elector believes the candidate who makes a "solemn

(a) Printed Minutes, and 108 Journal, 745.

and sincere declaration" as to the particulars of his qualification, in preference to the candidate or party preferring the charge, can he be said to act with "wilful perverseness" if the votes for the candidate objected to? And yet, all the modern election cases establish the principle that under such circumstances, the votes are thrown away; *Cork*, K. & O. 391 (a); *Belfast*, F. & F. 601; *Tavistock*, 1853, 2 P. R. & D. 5.

In like manner when the disqualification arises from the tenure of an office, can it be said that it is necessary to show that the voters were influenced by a "wilful perverseness" in voting for the candidate after notice? Here, no doubt, the *fact* is easily ascertained. Does the candidate hold the office, or does he not? This is readily answered. But is the office one that disqualifies? This is often a very intricate question of law, and one upon which it would be impossible for common men, unread in acts of Parliament, to come to an accurate conclusion during the hurry and turmoil of an election. And yet, if the electors are wrong in their view of the law, they have been uniformly held to have thrown away their votes; and no one would say that such circumstances would lead to the fair inference, that they had been wilfully per-

(a) In the *Cork* case, K. & O. it seems doubtful whether a great part of the voters, who thus were for the time disfranchised, understood the language in which the notices were published, for they were in the English language, and were not explained to the electors, many of whom could not read English. It is said in the Report (p. 393), that it was proved that they all knew the meaning of them; but the means whereby this knowledge was obtained are not stated.

verse; *Fife*, 1 Lud. 455; *Leominster*, 1827 (a); *Wakefield*, B. & Aust. 270. These cases all proceed on the principle, that every one is bound, and supposed to know the law.

In the case of *Frome*, 1853 (b), the question whether Col. Boyle, the member petitioned against, was disqualified or not, was a very nice question of law, depending upon the construction of several acts of Parliament. As the election had not been contested, the question did not properly arise whether the votes given for the hon. member would have been thrown away; but had such been the case, there can be no doubt that the petitioner would have been seated.

It would seem, that the only distinction to be taken between the case on which the 2nd *Clitheroe* made their report, and the cases of want of property qualification, is this: that in the latter it may be said, that the *facts* do exist even though the voters have no means of knowing them, but by the notice of them when given; but that in cases of bribery and treating, the *fact* does not exist until it has been established by the decision of a competent tribunal; until that has taken place there is only the accusation of bribery or treating, and not the fact. Every man is presumed to be innocent until he is proved to be guilty. This was no doubt the view taken in the case of *Penryn*, C. & D. 55. On the other hand it may be said, that the incapacity to be elected at a particular election is the consequence of doing the corrupt acts themselves, and does not arise from the conviction of having done

(a) Rog. Elect. App. p. x.

(b) 2 P. R. & D. 58.

them. And that the *fact* of bribery or treating is often notorious though no conviction ever takes place. That the argument on the other side, that bribery is not a fact until it has been proved before a tribunal, would enable voters who had been present at, and had witnessed the corrupt acts to vote after notice of the disqualification. The question is one full of difficulty. The Legislature has not as yet thought fit to follow the suggestion of the *Clitheroe* committee, and to cut the knot by a positive enactment on the subject.

In no case are votes thrown away, unless there has been a poll demanded and taken. If one candidate were to object to the capacity of his opponent on the hustings, and give notice to that effect to the electors, and were then, after a show of hands in favour of such opponent to allow him to be elected, he could not afterwards come to the House and lay claim to the seat. He ought to have first demanded a poll, and then, if he had polled but ten votes to a thousand polled by his antagonist, he would, as the law now stands, have been entitled to the seat. This question was discussed in the *Frome case*, 1853, 2 P. R. & D. 73. It has been before pointed out, that the returning officer has no power whatever to judge of the qualification of candidates (a); and if the incapacity of Col. Boyle had been as clear, as it was doubtful, the returning officer would have been bound, under the circumstances, to have returned him. The notice distributed to the electors ought not to be held to have any effect upon the election, because the persons around the hustings are seldom voters; and it would

(a) *Ante*, p. 53.

be contrary to reason and justice to say that electors had thrown away their votes, because a majority of the non-electors there present had held up their hands for a disqualified candidate.

With regard to the practice of committees in the trial of petitions alleging corrupt practices, the recent statute has made no alteration. There is, however, one matter which though alluded to before may as well be here noticed. The *sixth* section of the 17 & 18 Vict. c. 102, imposes a most serious penalty on persons guilty of corrupt acts, *viz.* perpetual disfranchisement.

“Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled ‘The List of Persons disqualified for Bribery, Treating, or undue Influence,’ which lastmentioned list shall be appended to the list or register of voters, and shall be printed and published therewith,

wherever the same shall be or is required to be printed or published."

This disqualification is perpetual and universal. It is not confined to the place at which the offence was committed, but extends to every county and borough in the United Kingdom. As soon as the conviction or judgment for penalties has been proved before any revising barrister, he is bound to strike the name of the person so affected out of the list of voters, and insert it in "the List of Persons disqualified for Bribery, Treating, and undue Influence." A voter who *receives* entertainment at an election is not liable to this serious disqualification. The vote of such a person may be struck off the poll on a scrutiny, for the *fourth* section provides that "every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at *such* election, and his vote, if given, shall be utterly void and of none effect." Such voter, however, is not liable to be sued for a penalty in so being entertained, and therefore he would not be disqualified beyond the particular election at which his vote was struck off.

Since the foregoing pages were published, two cases have been decided in the Courts of law upon the construction of certain clauses in the "Corrupt Practices Prevention Act, 1854."

One of these, *Grant v. Guinness (a)*, turned principally upon the construction of the word *agent* in the 6th section of that act. This was an action brought by an agent employed at the election (not being an agent for election expenses) to recover the amount of his retainer, and of certain expenses incurred by him on behalf of the defendant who had been a candidate at an election for Barnstaple. The defendant pleaded that no bill had been sent in to him, or to any authorized agent of his, within one month, as required by the 16th section. On the trial the plaintiff failed in establishing certain portions of his demand, and with regard to the remainder, it appeared that the plaintiff had sent in an account of his claims to the agent for election expenses, but none to the candidate or to any one authorized by him to receive the accounts. Two questions were raised before the Court of Common Pleas: 1st, Was the agent for election expenses the proper person, by virtue of that appointment, to receive the account? 2nd, Was it necessary to send in any account at all of those portions of the plaintiff's demand which the jury had found in his favour? Upon the first point the Court were of opinion that the authorized agent, mentioned in the 16th section, was intended to be a different person from the agent

(a) 25 L. J. C. P. 66; S. C. 17 C. B. 190.

for election expenses ; or, to speak more correctly, that the appointment of a person as agent for election expenses, did not constitute him agent to receive and send in claims against the candidate to the auditor—at the same time there was nothing to prevent the two duties being thrown upon the same person. As to the other part of the case, the Court decided, that as to all that part of the demand which fell in within the definition of *election expenses*, the plaintiff could not recover, inasmuch as he had not sent in his claim to the candidate or to his authorized agent within the proper time ; but as to the residue, he was entitled to recover. This residue consisted, 1st, of the *personal expenses* of the candidate *himself*, which the plaintiff had paid at his request, and of these no account need be sent in within the 22nd section (a) ; 2ndly, of subscriptions to charities, which the 24th section says are not to be deemed election expenses ; and, 3rdly, of the charge for an opinion of counsel as to whether the defendant had a good qualification by estate. This latter item the Court held to be no more applicable to the costs and expenses of this election than those of any other election.

(a) In a recent edition of a well-known work on the law of elections, it is stated, more than once, that it was decided in the case of *Grant v. Guinness*, that the expression *personal expenses* of the candidate included the personal expenses (including railway fare and hotel bill) of his *agents*. This is altogether a misapprehension as to the point decided. The most full report of the case will be found in the *Law Journal*, and it is there expressly stated that the items of personal expenditure which were allowed, were the hotel bill, cab, railway, &c., being the personal expenses of the defendant on going down to Barnstaple as a candidate. 25 L. J. C. P. 68, *ante*, p. 65.

Considerable difficulty will no doubt be found in interpreting the different sections of this statute. Several agents are spoken of in the different sections, whose duties are not necessarily the same as those solely intrusted to the agent for expenses. The 16th section speaks of *agents (a)* sending in claims to *the agent* authorized to receive them, who, as we have seen, is not necessarily the agent for election expenses. The agent mentioned in the 17th section is the same as the authorized agent in the 16th. The 18th section speaks of a candidate or his agent naming a banker, through whom bills should be paid. Nothing is said in the section as to who is to draw the cheques which are to be paid by the auditor. The cheques, when drawn, are to be countersigned by the candidate, or some person on his behalf specially appointed for that purpose. Probably it was intended that any one who had a special authority from the candidate might name the banker on whom the cheques were to be drawn, and that the agent for election expenses was to be the person to draw the cheques; for, by the 31st section, such agents, *i.e.* for election expenses, are the only persons who have authority to expend any money or incur any expenses of or relating to the election. Considering the penal character of the provisions of this statute, it is much to be regretted that these enactments have not been more distinctly worded.

Again, by the 22nd section, the personal expenses of the candidate and the expenses of advertising in newspapers may be defrayed by the candidate himself,

(a) These are all the persons employed by the candidate in conducting the election.

or by his authority. The person acting under such authority is clearly not the agent for election expenses first, because when that agent is the person intended he is spoken of as in the 25th section as "the agent appointed in writing according to the provisions of the act," and, secondly, because no distinction is made between the personal expenses of the candidate and those of advertising; and it seems to follow, from the case of *Grant v. Guinness* (though not expressly decided), that the personal expenses (not being election expenses) may be paid by an agent who is not the agent for election expenses. And as the expense of advertising is placed in the same category, it seems to follow, that the person who would have legal authority to pay the one would have the same authority to pay the other.

The case of *Cooper v. Slade* (a) turned upon this much vexed question of the legality of the payment of the travelling expenses of voters. The learned judge at the trial (b) directed the jury, that a promise to pay the fair and reasonable expenses of a voter travelling to the polling place in order to induce such voter to vote for the defendant amounted to bribery; and also that the payment by the defendant to the voter of money on account of the voter's having voted for the defendant, although the sum of money given was no more than the actual expense of travelling, and although the defendant honestly believed that he was committing no offence amounted to bribery. To this ruling the defendant's counsel excepted. The case came before

(a) 25 L. J. Q. B. 324.

(b) Lord Wensleydale.

the Exchequer Chamber in 1856. And the judgment of the Court was delivered by the late Baron Alderson.

"What we have to do (said the learned baron) is to construe a positive law, which enacts that "to promise money to a voter, in order to induce him to vote," and "corruptly to give money to a voter on account of his having voted," are severally matters which subject to a penalty the person so promising or giving. And, upon the construction of this statute, we are of opinion (that is to say, all except my brother Williams) that a promise to a voter of his travelling expenses conditionally on his coming and voting, for the promiser within the first cited part of the enactment, but that a promise of travelling expenses not so conditioned is not. What the statute meant to prohibit was an act directly calculated to influence the vote, and it is impossible to say that a voter, finding himself under the necessity of voting for a particular person, or losing his travelling expenses, which he has been promised if he does vote, is not under an inducement to vote. The statute cannot mean to regard the condition of the promiser's mind; otherwise such a promise made to A., who has clearly already determined to vote for the promiser, and whom the promiser did not propose in any respect to influence, would be out of the statute, while a promise made in the same words to B., who was not in that situation, and whom it was intended to influence, would subject the promiser to the penalty. Nor can it be supposed to regard the voter's mind, as in like way the same promise might or might not be lawful according to the disposition of the different persons to whom it was made with the same intent. It is the act itself which the statute intended to pro-

hibit. On the other hand, an unconditional promise of travelling expenses to a voter to go to the place of polling, with leave to him to vote or act as and how he likes, seems to us certainly not a promise of money (a) to induce the voter to vote, being neither a promise with that view nor directly calculated to cause it. This construction is confirmed by the third section, which must have a corresponding meaning to the second, and which certainly would include a voter contracting for travelling expenses for his vote, or his agreement to vote, and would exclude the mere unconditional receipt of those expenses. So again the fourth section only prohibits the corruptly giving of meat, &c., for the purpose of corruptly influencing a voter to give a vote (b). It does not prohibit the *bonâ fide* giving of such meat, &c., unconditionally, while section 23 absolutely prohibits any giving of refresh-

(a) In the report of this case, in 27 Law Times, p. 137, Baron Alderson is reported to have said, after delivering the judgment of the Court, "I am of opinion, and I know several of my learned brothers agree with me, that the words valuable consideration mean 'valuable consideration estimated in money.'"

(b) This opinion of the meaning of the word "corruptly," and of the effect of the fourth section, is considerably at variance with the views already stated at pp. 91—125. The case of *Cooper v. Slade* is at present before the House of Lords waiting for argument. It must, however, be remarked, that the fourth section not only forbids the giving of meat, &c., corruptly to influence the voter, but also such giving of meat, &c., on account of such voter having voted or refrained from voting, which latter words are the same as those used in the twenty-third section. With all deference to the opinion of the learned Judges, it is difficult to see how there can be a *bonâ fide* giving of meat to voters on account of their having voted, &c.

ment to any voter on the nomination day, or day of polling, on account of his having polled, or being about to poll, without using any such words as "in order to induce." Now a giving of refreshment might clearly be within the 23rd section and not within the 4th section, because not given in order to induce the voter to vote, and it is difficult to see why a promise of travelling expenses should inevitably be within the 2nd section, when a promise of refreshment may not be (a).

As to the other count, we agree with the learned judge that the pravity or honesty of intention of the plaintiff in error is immaterial if he does the thing prohibited; but we think the word "corruptly" has a definite meaning. If, for instance, there had been a previous unlawful promise, conditional on the voter voting, or if there had been a previous understanding to that effect, or a corrupt bargain for the future (b),

(a) The attention of the Court does not seem to have been drawn to the fact, that the 23rd section prohibits not only the candidate and his agents, but every one else, from giving refreshments to voters on the days of nomination and polling, while the 4th section is confined to the acts of the candidate and persons acting on his behalf. This latter section forbids not only the giving of entertainment to the voter "in order to influence his vote," but also the corruptly giving it to him "on account of his having voted." If the view of the law of treating as stated in the judgment here given be adopted by committees, it will be necessary either to resort to the former state of the law or to introduce some new enactment, if it be desired to repress corrupt proceedings at elections. Hitherto committees have held, almost without exception, that the giving of entertainment to voters, because they were voters, was from its very nature corrupt. Why is it ever done, if not to influence the voter or to reward him for his vote?

(b) It has been pointed out (p. 91) that all these cases of promises, bargains, &c. are covered by the first branch of

we think the case would have been within the statute, but we are clearly of opinion that the merely paying the travelling expenses honestly, with no previous engagement, is not prohibited. It was not within the former statute, *Huntingtower v. Gardiner*, and to hold that it is within the present statute is to give no meaning to the word "corrupt," which appears so emphatically used in relation to the subsequent doing of an act, and omitted as to the previous promise to do it; a construction which, if correct, would make a person giving money or procuring employment within the second branch of the 2nd section at any distance of time after the election (the receiver and giver being then equally unconnected with the same constituency, or any other) liable to the severe penal consequences we have before referred to. We think this cannot be, and that as there was no evidence of a previous promise or other matter to make the gift "corrupt," there was no evidence in support of the second count."

Mr. Justice Williams was of opinion "that there was evidence for the jury that the defendant, Mr. Slade, had promised a voter to pay his travelling expenses, and that the object of such promise was to prevail on him to come and vote for Mr. Slade at the election."

the second section; if the word corrupt is "emphatically" used in the 2nd section, may it not be argued that it has been omitted with equal force in the 3rd section, which defines bribery in the voter? And that the Legislature intended, after having prohibited all bargains and agreements to give valuable consideration for votes, to go a step further and to supply the void pointed out in *Huntingtower v. Gardiner*, and to re-enact the provisions of the 5 & 6 Vict. c. 102, s. 20, which forbade the giving of any valuable consideration to voters after an election on account of the way in which they had exercised their franchise.

As the case of *Cooper v. Slade* is at present in the House of Lords, in error from the judgment of the Court of Exchequer Chamber, it does not appear expedient at present to make any further comments upon it. The case will probably be determined by the Court of ultimate appeal before any questions of bribery and treating are ripe for decision by Committees of the House of Commons.

Besides these two cases decided in Westminster Hall, one case of corrupt practices at an election has been investigated by a committee since the passing of the recent statute (a). The petition alleged that "Mr. L. had procured his election by means of a corrupt and illegal bargain or agreement against the statutes in force and the policy and law of Parliament." The evidence in support of this charge was that a Mr. C. had, in the autumn of the year 1853, attended at Barnstaple before a commission of inquiry and had exerted himself to prevent the threatened disfranchisement of the borough on account of corrupt practices which had taken place at a previous election; that he had gone down voluntarily to attend the inquiry, and had incurred a bill of costs for 1,400*l.* This bill he had not sent in to any one. That a short time before the election in August, 1854, Mr. L. called on Mr. C., and the latter drew up an agreement whereby Mr. L. undertook to pay the sum of 400*l.*, and the sum of 1,000*l.* within a week after the election at Barnstaple. A few days after this agreement was signed, Mr. L. became a candidate; Mr. C. was not present at the election, and he stated on oath to

(a) *Barnstaple*, 1855, Pr. Mins., and 2 P. R. & D. 340.

the committee that it was no part of the understanding that he should procure Mr. L.'s return, and that he told Mr. L. at the time that it would in no way influence his candidature or his election one way or the other, that the bill of costs was a charge that he might legally pay, and that Mr. L. undertook to pay the 1,400*l.* because he, Mr. C., had told him that he had incurred, these expenses in defending the commission of inquiry. The committee decided " that Mr. L. procured his election and return by means of an illegal bargain and agreement."

CHAPTER IV.

QUALIFICATION BY ESTATE.

IN order to represent in Parliament any county, city, borough or place in England, Wales, or Ireland, with the exception of the Universities of Oxford and Cambridge in England, and Trinity College Dublin in Ireland, it is necessary that the person elected, unless he be one of those specially exempted, be possessed at the time of his election and return of a certain qualification in respect of property (*a*).

The persons here mentioned as specially excepted are those named in the 9th section (*a*), and are—

1. The eldest sons or heirs apparent of peers (*b*).
2. The eldest sons or heirs apparent of persons themselves qualified in respect of estate to serve as knights of a shire.

These two classes may sit for any of the places here mentioned without any property qualification.

(*a*) 1 & 2 Vict. c. 48.

(*b*) The eldest son of a Scotch peer is within the exception. *Rochester*, C. & D., 229. A committee might have to try upon these exceptions most difficult questions of pedigree and legitimacy. See *Gloucestershire*, 1810; 1 *Roe*, 51.

The members for Scotch counties and burghs need not have any qualification by estate. For the town of Berwick-upon-Tweed the same qualification is required as for other boroughs in England.

Amount of, in Counties.] No person is capable of being elected for a county in England, Wales, or Ireland, unless at the time of his election and return he be seised or entitled for his own use and benefit of and to an estate, legal or equitable, in lands, tenements, or hereditaments of any tenure whatever *situate within* the United Kingdom of Great Britain and Ireland, of the clear yearly value of not less than 600*l.* over and above all incumbrances affecting the same, or unless he have an estate of similar amount derived from personal estate and effects (a) within the United Kingdom above all incumbrances affecting the same, or unless such estate be derived partly from land and partly from personalty.

As to the necessary duration of the interest, it may be for the life of the candidate, or for that of any other person then living, or for a term of years, either absolute or determinable on his own life or some other life, and of which term not less than thirteen years shall at the time of the election be unexpired.

Amount in Boroughs.] For boroughs the qualification is fixed at 300*l.* a-year over and above all incumbrances affecting the same, and is derivable from the same descriptions of property as those required for counties, and the interest therein must be similar in point of duration.

(a) By the 9 Anne, c. 5, the estate was required to be in lands, tenements, or hereditaments, in England or Wales, for the life of the member himself, or a *greater* estate.

It will be seen that the qualification, whether arising from land or personal property, must be locally situated within the United Kingdom (*a*). Therefore where a sitting member gave in as his qualification at the election, and also at the table of the House, an annuity or annual payment of 1000*l.*, payable quarterly to him during the whole term of his life by the Hon. East India Company, and receivable at the East India House in Leadenhall-street, in London, and it appeared in evidence that the fund out of which the annuity was paid was situate in India, it was decided, on petition against his election and return, that the sitting member was not duly qualified (*b*).

It is further required by the statute that the qualification, whether derived from real or personal property, be of the requisite value "over and above all incumbrances affecting the same."

Therefore, when a candidate at an election, upon request made to him, in the manner to be hereafter described, made a declaration that his qualification arose out of a rent-charge of 300*l.* a-year for his own life, chargeable upon and payable out of certain lands in Ireland, and it was afterwards proved upon petition against his return, that there were unsatisfied judgments against him at the time of the election, to the amount of nearly 12,000*l.*, the committee decided that he was not duly qualified, although it was not proved that the judgment creditors had taken any steps

(*a*) 1 & 2 Vict. c. 48, s. 2.

(*b*) 1st *Harwich*, 1 P. R. & D. 289.

against the particular estate on which the member founded his qualification (a).

Although a qualification created for the express purpose of qualifying a candidate to sit in Parliament has always been upheld, it has usually been considered necessary that the transaction should be a real one and done *bond fide*. In a recent case (b), however, where a rent-charge of 320*l.* had been created on certain lands in Ireland, avowedly for the purpose of creating a qualification, but the deed creating it was left unregistered, and therefore the lands out of which it arose were not bound by it; and the grantee stated that there was no consideration given, and that he never expected to get any annuity, and further, that it was an understood thing that he should not pay anything or have any annuity, the committee nevertheless decided that that was no objection to the sufficiency of the qualification, and that it could not be disputed upon this ground.

In the case of *New Ross*, 1853 (c), Mr. O'Hara, the grantor of the rent charge, was called as a witness by the petitioner, and stated that the transaction was this:—He knew that Mr. Duffy was anxious for a seat in Parliament, and as he was determined that Mr. Duffy should not lose the chance of a seat for want of a qualification, he said to him, "Duffy, if you are prepared to go into Parliament, but are prevented doing so on account of the want of the necessary qualifica-

(a) 1st *Sligo*, 1 P. R. & D. 118. See also 1st *Harwich*, ib. 296.

(b) *Barnstaple*, Mins. pp. 7 & 8.

(c) 2 P. R. & D. 195.

tion, let that not stand in the way, I will grant you one;" and this being assented to by Mr. Duffy, the deed was prepared. Mr. O'Hara further stated, that at the time it was indifferent to him whether the rent-charge was for 600*l.* or 300*l.*; that although the time for two half-yearly payments under the deed had elapsed, nothing had been paid to the sitting member, but that he (Mr. O'Hara) had received the entire rents of the property, that there had been no consideration for the deed, and that it had not been registered. He stated further that it was his object to grant Mr. Duffy a legal qualification to sit as member of Parliament, and that no condition, qualification, or reservation with respect to the deed had been raised between them. It was argued that this was a mere colourable qualification, and that it was the intention of both parties to treat the deed as a nullity. The committee however decided that the qualification was sufficient.

It would appear from cases decided on the former statute, 9 Anne, c. 5, that an objection cannot be sustained against the qualification on the ground that it has been created during the election but before the return. Thus in the *Bristol case* (a) objection was taken that the qualification of Mr. Cruger, who was elected, had been executed during the poll; but the objection was overruled. And Sir J. Simeon, observes on this case: "The earliest period at which the statute of 9 Anne required the party chosen to be qualified was at the election; but there being no election till the poll is finished, the decision seems clearly right so far as depends upon the time." See also *Leominster*, 1 C. & D. 1, and *Bath*, P. & K. 23. In the latter

(a) Simeon, 51. Orme, 281.

case it was pointed out by the learned counsel for the sitting member, that the committee in the *Leominster* case must have considered that a qualification might be obtained during the election, as they decided on the question of value.

The 9 Anne, c. 5, s. 1, required that the person to be elected should *at the time of such election and return* be seized &c. The language of the 1 & 2 Vict. c. 48, s. 2, is exactly similar. There can therefore be no doubt, that if a candidate were to obtain his qualification after demand made, but before the election was concluded, and within the period of twenty-four hours of the request made to him according to the 3rd section, he would have complied with the requisitions of the statute. If a candidate were to refuse to make the declaration when requested, it would no longer be open to him to obtain a qualification afterwards, *Leominster*, C. D. 1. A wilful refusal to make the declaration at once makes the election and return void.

It will be observed, that there is nothing in the recent statute which requires that the member shall *continue* to possess the qualification. He must be possessed of it at the time of his election and return, and he must also deliver in at the table of the House a statement of his qualification when he takes the oaths of fidelity, &c. : but he may part with this qualification the next day. The only inquiry that would be gone into on petition on this head would be, was the member qualified at the time of his election and return, and had he a good qualification when he took the oaths (a).

(a) The 33 Geo. 2, c. 20, was the first Act requiring members to hand in a schedule of their qualifications in the House; its provisions were substantially the same as those in the 1 & 2 Vict. c. 48.

Declaration of, at Election]. It is provided by the 3rd section (a) that every candidate shall, upon a reasonable request made to him in writing, at *the time of such election*, or at any time before the day named in the writ of summons for the meeting of Parliament, by any candidate, or by any two or more registered electors having a right to vote at such election, make a declaration in the form given in the Act. The request must be in writing and signed by the parties making it. (Section 3).

If the candidate *wilfully* refuse to sign the declaration when duly requested to do so, or if he neglect for twenty-four hours to make it, his election and return will be void. In order that the request may be duly made, the parties making it must at the time of making it tender to the candidate the sum of *five shillings*, that being the amount of fees prescribed by the act for administering the declaration. *1st Sligo*, 1 P. R. & D. 120.

The request, if not made by the candidate, must be made by registered electors having a right to vote; and if the sufficiency of the qualification is afterwards questioned before a committee, the petitioner must be prepared to prove by the production of the register and identification of the persons making the request, that they were persons so qualified to call upon the candidate to make the declaration. *Athlone* (b).

The request must be *reasonable*, that is to say, intelligible in its terms. It may be made at any time before the day named for the meeting of Parliament.

(a) 1 & 2 Vict. c. 48, s. 3.

(b) Pr. Mins. p. 8; 2 P. R. & D. 177.

If the request were made on the morning of the day of polling, the candidate would have twenty-four hours from that time to make the declaration. Therefore, votes given for him in the mean time would not be thrown away if it should afterwards turn out that he had given in a bad qualification.

In making his declaration the candidate should follow the form given in the statute (a). He must also, if any of his property is burdened, or if there are unsatisfied judgments against him, take care to include a sufficient amount of property in his declaration to leave the requisite value over and above the amount of his incumbrances. The candidate is bound by the declaration given in at the time of the election, or subsequently, in answer to the request made. He cannot pray in aid other property not mentioned in his declaration. *West Gloucestershire*, 1 P. R. & D. 13; *1st Sligo*, ib. 122 (b). The property should be described accurately. A statement in the declaration that certain funded property was vested in the names of certain trustees who were named, was held not to be supported by evidence that such property was vested in one of the persons so named and a third person. *West Gloucestershire*.

The candidate must also take care to make and subscribe the declaration within the time limited by the 3rd section. Therefore, where a sitting member had neglected to make the declaration until eight days had elapsed after service of the request upon him, the committee unanimously resolved, that his election

(a) Form in App.

(b) See also *1st Drogheda*, K. & O. 207.

was void by reason of his having neglected to make and subscribe a declaration of his qualification according to the requirements of the statute 1 & 2 Vict. c. 48. s. 3. *Dundalk*, 1 P. R. & D. 95. There is now no *reasonable* time within which the declaration is to be made; but the refusal or neglect to make the declaration must be wilful. If, therefore, the candidate were abroad, or in such a situation that he could not subscribe the declaration within the time limited, such neglect would not be *wilful*. *Colchester*, 3 Lud. 166. The declaration may be made before the returning officer, or a commissioner for that purpose lawfully appointed, or any justice of the peace within the United Kingdom. Where the declaration is made before a justice of the peace, he must have jurisdiction in the place where it is made. In a recent case (a), the declaration purported to be taken in the county of Kilkenny before a justice of the peace of the county of Wexford, but, upon its appearing that the justice who took the declaration was also a justice for the county of Kilkenny, the declaration was held to be sufficient.

The returning officer, commissioner, or justice of the peace before whom the declaration is made, is required to certify the same to the High Court of Chancery or Court of Queen's Bench in *England*, when the declaration is made in *England*; and in like manner, when it is made in *Ireland*, it must be certified to the Court of Chancery or of Queen's Bench there (b). No provision is made for certifying

(a) *New Ross*, 2 P. R. & D. 191. See also *Caernarvon*, B. & Aust. 552.

(b) 1 & 2 Vict. c. 48, s. 4.

the declaration when it is made in *Scotland*. The former part of the 4th section enacts that the declaration may be made before any justice of the peace of the United Kingdom of Great Britain and Ireland; and, although no property qualification is required for the representative of a place in Scotland, it may often happen that the member for an English or Irish constituency may be in Scotland at the time he is requested to make his declaration. In such a case the making of the declaration would be sufficiently proved by its production and proof of the handwriting of the justice taking it.

The declaration must be certified by the person before whom it is made within *three* months after the making of the same, under a penalty of 100*l*.

The act does not require that the certificate shall be *indorsed* upon the declaration. It appears from the *New Ross case* (a) that in Ireland the justices sometimes send merely a certificate, without either the original or a copy of it, and sometimes the original, with the certificate indorsed thereon. In that case two declarations were produced and received in evidence; the one having a certificate indorsed upon it, and this document was received as coming from the proper custody, without any further proof of the declaration; the other, which had no certificate indorsed upon it, but purported to be taken before a justice of the peace, was admitted upon proof of the signature of the magistrate to the declaration. The provision as to the magistrate certifying the declaration ought to be considered directory, and a neglect on his part

(a) 2 P. R. & D. 189.

to comply with the directions of the statute, though it subjects him to a penalty, ought not to prevent the parties wishing to give the declaration in evidence from doing so, if it has been duly made in other respects (a).

The 5th section provides that no fees shall be taken for administering the declaration, &c., except certain fees amounting to the sum of five shillings; and, as has been pointed out before, this sum ought to be tendered to the candidate at the time the request is made to him.—1st *Sligo*, 1 P. R. & D.

Statement of, in the House.] Besides the declaration which any candidate may be called upon to make before the meeting of Parliament, every person elected for any place in England, Wales or Ireland, must, before he can sit or vote (after the Speaker has been chosen), deliver in at the table of the House, to the clerk of the House, and while the House is sitting, with their Speaker in the chair (b), a paper signed by such

(a) As the person taking the declaration has *three* months, within which he is to certify, it might often happen that the declaration would have to be proved before the time for certifying had elapsed.

(b) In consequence of the stringency of these words doubts were entertained in the session of 1855 whether the statement could be legally delivered in to the House during the absence of the Speaker, and when the chairman of committees was in the chair. A short act was passed which after reciting, *inter alia*, "whereas certain matters concerning the office of Speaker are regulated by statute, and the validity of acts done or proceedings taken during the absence of the Speaker may hereafter be questioned," enacts, that any acts done with a deputy Speaker in the chair shall be as valid as if the Speaker himself were in the chair (18 & 19 Vict. c. 84).

member, containing a statement of his qualification, and he must also make and subscribe the declaration contained in the act (section 5). This declaration is to be made immediately after the member has taken the oaths. Any member who knowingly makes a false declaration (*a*) will be guilty of a misdemeanor (section 7). And if any member sits or votes, after the election of the speaker, before he has complied with the provisions of the act in this respect, his election will be *void*, and a new writ will be issued.

It will thus be seen that a member may have his election questioned on several distinct grounds in respect of his qualification.

1st. That he had none at the time of his election and return.

2ndly. That he refused, or neglected to make a declaration when requested so to do.

3rdly. That the declaration made upon request does not contain a good qualification over and above all incumbrances affecting the same.

4thly. That the statement given in at the table of the House contains an insufficient or untrue qualification.

Each of these are separate grounds of objection, and any one, if established, would be fatal. Thus, though the member had a good qualification at the time of his election, still if he did not include it in his declaration, or if he wilfully neglected to make it in due time, his election will be avoided. If the qualification given at the election be insufficient, and the member be petitioned against on that ground, he cannot fall back on

(b) R. v. De Beauvoir, 7 C. & P. 17.

the statement given in at the House (a). A case, however, may be put in which the qualification given in at the election did not exist at the time the member took his seat, and yet he would be considered duly elected. For instance, if the qualification at the election was of the requisite value for the life of *another person*, and such person were to die after the return, but before the meeting of Parliament, there is nothing to prevent the member from obtaining a new qualification before he makes his declaration at the table of the House. He was duly qualified when he was elected; and he can truly say at the table of the House "I am to the best of my knowledge and belief duly qualified."

In framing a petition alleging want of qualification, care should be taken to express distinctly the objection intended to be raised. It is true that in one case (b), where the allegation was "that the petitioners verily believe that Mr. B. *has* not the requisite qualification or estate to be capable of sitting or voting in the House," the committee allowed the petitioners to go into evidence to attack the qualification. This allega-

(a) The *Dover case*, P. & K. 412, if it ever was law, must be taken to be overruled by *1st Sligo*, 1 P. R. & D., and by the provisions of the 1 & 2 Vict. c. 48. The insufficiency of the statement in the House would be *primâ facie* evidence of want of qualification at the election. *Athlone*, 2 P. R. & D. 178.

(b) *Coventry*, P. & K. 337—345. The objection raised in this case was that the sitting member had not complied with the Standing Orders of 1717, in delivering in a particular of his qualification, with the names and places of abode of the witnesses to the conveyance. These Standing Orders have ceased to exist since the 1 & 2 Vict. c. 48.

tion really contained no valid objection. At the time that the petition was presented it was not requisite that the member should have a qualification. He might have had it when he was elected, and when he took his seat, and have parted with it before the date of the petition.

With reference to the course of proceeding on petitions alleging want of qualification, it is for the petitioner to make out the absence of the qualification, and not for the sitting member to prove that he has one. *Tavistock*, 2 P. R. & D. 10 (*a*). The whole of the allegations with regard to want of qualification must be gone into at once. A committee will not decide separately on the sufficiency of statement, and sufficiency of the qualification itself. *Lincoln*, P. & K. 378. *Dublin*, 1 P. R. & D. 204. The order in which allegations with regard to want of qualification are taken, when there are charges of a different character in the petition, will be considered hereafter (*b*).

It only remains further to be observed that, when the want of qualification on the part of a candidate is known at the time of the election, the opposing party should take care to give timely notice of the ineligibility arising therefrom, in order that votes afterwards given for such candidate may be considered as thrown away (*c*). And the notice should be so framed as to inform the electors distinctly of the objection afterwards intended to be relied upon. For instance, if it be that the member has not at the time of his election

(*a*) *Coventry*, P. & K. 349. *Dover*, ib. 417.

(*b*) Chapter on "Practice."

(*c*) *Ante*, p. 224.

the requisite qualification, it should be so expressed (a); if it be that he has refused to make a declaration when duly requested, or has neglected to do so for twenty-four hours, the notice should point out the specific objection; so again, if the objection be to the efficiency of the statement in the declaration when made, that should be so stated. The giving of the seat to a candidate who is supported by only a small portion of the constituency, is so serious an interference with the principles of representation that committees ought to require the strictest proof before they hold that the votes of electors have been thrown away. The rule however is now well established that, when the notice has been given of an existing disqualification, the votes of all those who poll for the ineligible candidate are thrown away (b). When this notice has been given generally to all the electors before they come to the poll, either by means of placards, or hand-bills distributed to them, it is not necessary to prove notice to individual voters, *Tavistock*, 2 P. R. & D. 5. If the notice of ineligibility were not given generally, but only to a few electors and after a large portion of the constituency had polled, then the petitioners should be in a condition to prove express notice to these particular voters, and the claim of the seat before the committee would have to be conducted like one of scrutiny, and it would be advisable to deliver lists of

(a) *2nd Drogheda*, K. & O. 213.

(b) *R. v. Hawkins*, 10 East, 211. *Claridge v. Evelyn*, B. & A. 81. *Leominster*, C. & D. 1. *Fife*, 1 Lud. 455. *Flintshire*, 1 Peck. 526. *Cork*, K. & O. 391. *Belfast*, F. & F. 601. *2nd Drogheda*, K. & O. 213. *Wakefield*, B. & Aust. 270. *Tavistock*, 2 P. R. & D. 5.

the voters proposed to be struck off as in a case of scrutiny, 2nd *Horsham* (a). When however the disqualification is notorious, this is not necessary, for general notoriety stands in the place of express notice.

It will be no answer to a candidate claiming the seat to say, that the member returned asserted positively to the electors when his qualification was questioned that he was duly qualified, *Belfast* (b). In this case the sitting member had taken the oath of qualification at the election. See also *Tavistock*, 2 P. R. & D. 5.

When the demand of the qualification is made after the election and refused, as the electors could have no knowledge of such refusal when they voted, the election will be merely void, *Weymouth*, 1730, 1 Lud. 450. So also if the demand of the qualification were made during the day of polling, as the candidate has twenty-four hours within which to make it after the request to him, no votes given for him in the mean time would be thrown away on the ground that he had neglected to comply with the statute.

It has been already pointed out that by the 8th section of the modern statute, if a member sits or votes before he has complied with the provisions of the act "his election shall be void and a new writ shall issue." It might happen that no opportunity would be given to question the validity of the election by an election petition, on the ground that the member at the time he took his seat gave in an untrue, or insufficient statement of his qualification. For instance, if a member were not to take the oaths and his seat until after the

(a) 1 P. R. & D. 240.

(b) F. & F. 601.

for questioning his election by petition had passed, no election petition could be presented against him on the ground that he did not possess the qualification which he gave in to the Clerk of the House. The House itself would not now have the power of instituting such an inquiry. All such questions are now governed by statute. If the member sat and acted without making any declaration at all, the House would probably, upon being informed of that fact, declare the election void, and if the time for petitioning had passed they would issue a new writ. It would never be open to any one to indict the member for knowingly making an untrue statement (a), and properly, upon conviction of this misdemeanor, the House would expel such member on account of his misconduct, as has been done on similar occasions, *Wootton Bassett*, 1812, *Tipperary*, 1857. A member who could not truly make the requisite declaration in the House might inform the Speaker by letter of his want of qualification, as was done by Mr. Southey in 1826 (b), and when the fourteen days after his return were passed a new writ would be issued.

(a) *R. v. De Beauvoir*, 7 C. & P. 17.

(b) *May's Law of Parliament*, 2nd Edit. 436.

CHAPTER V.

ELECTION PETITIONS.

1. *What are Election Petitions.*
2. *Form of the Petition.*
3. *Who may petition.*
4. *The Recognizance.*
5. *Presentation of the Petition.*
6. *Proceedings after Presentation of Petition.*
7. *Who may object, and grounds of objection*
Recognizance.
8. *Renewed Petitions not necessary.*
9. *Petitions in case of Double Return.*
10. *Who may defend the Election or Return.*
11. *Defence of Seat in case of Double Return.*
12. *Withdrawal of the Petition.*

THE Legislature has of late provided several modes of inquiring into corrupt practices at elections. Some of them, however, do not in the result affect the seats of the parties returned. It is proposed, therefore, to consider at present only that class of Election Petitions which are presented for the purpose of disputing the validity of the election or return. The mode of proceeding on petitions, alleging General Bribery

under the act 5 & 6 Vict. c. 102, will be considered hereafter. The act now in force for regulating the trial of what are commonly known as Election Petitions, is the 11 & 12 Vict. c. 98. The provisions of this statute, are substantially the same as those of the statute which was in force on this subject from the year 1844 up to 1848, the 7 & 8 Vict. c. 103. The first point to be considered is the Petition (a).

(a). On the 12th Nov. 1852, Sir A. C. presented a petition from certain electors of the borough of *Derby*, complaining that at the last election for that borough systematic bribery had been resorted to for the purpose of procuring the return of T. B. H., Esq., and that a right honourable gentleman, a member of Her Majesty's Government and a member of the House, had been a party to such bribery, and he gave notice that he should move for the appointment of a Select Committee to inquire into and report upon the allegations contained in the petition, (cxxiii. *Hansard*, 128) when Sir A. C. rose to make the motion of which he had given notice, the Speaker called the attention of the House to the fact that this was substantially an election petition, that it began by stating that your petitioners are electors for the borough of *Derby*, and voted at the last election—and it also alleged "that the return of one of the members was procured by illegal and corrupt means and by an organised system of bribery which was resorted to and successfully carried out for the purpose of procuring and which did procure the said return." And the prayer of the petition was: "Your petitioners therefore humbly pray your Honourable House to institute a full and searching inquiry into the allegations of this petition, and into the proceedings of the right honourable gentleman." And he stated to the House that the question was whether the allegation as to the return ought not to be considered as an allegation of an undue return; and if so no debate ought to take place upon the petition, because the House would then have received a petition which it ought not to have received inasmuch as no recognizance had been entered into with regard to it, and none had been endorsed upon it by the Examiner. The petition was thereupon withdrawn (cxxiii. *Hansard*, 254). Another petition was on the 23rd Nov.

1. *What are Election Petitions.*] The 2nd section of the 11 & 12 Vict. c. 98, defines what are to be deemed *Election Petitions*; and places them in three classes. They are Petitions *complaining*.

1. Of an undue *Election*, or *Return*, of a member to serve in Parliament.
2. That no return has been made to the requisition of any writ, issued for the election of a member to serve in Parliament.
3. Or complaining of the special matter contained in any such return.

The election petitions which are most frequently presented, are those in the first class, *viz.*, petitions complaining of an undue election or return.

2. *Form of the Petition.*] There is no particular form in which an election petition is required to be drawn.

It ought to appear on the face of the petition that the parties petitioning have a right to do so. An alteration, probably unintentional on the part of the Legislature, has been introduced in the 2nd section of the 11 & 12 Vict. c. 98; varying from the preceding enactments on this subject. The 2nd section of the 7 & 8 Vict. c. 103, required, that the petition should be signed "by some person *claiming therein*, to have

presented by certain inhabitant householders of the borough of *Derby*, not alleging that they were electors, or complaining of an undue return, but making charges of corruption against the member of the Government mentioned in the former petition and praying for a searching inquiry into his proceedings. A Select Committee was afterwards ordered, to be nominated by the General Committee of Elections, to take the matter into consideration and to report to the House (c. 108, *Journ.* 55, 158, 195).

had a right to vote, or to have had a right to be returned, or elected thereat; or alleging himself to have been a candidate at the election." The language of the 2 & 3 Vict., and of the preceding statutes, was the same. In the 2nd section of the 11 & 12 Vict. c. 98, the words "*claiming therein*," are omitted as to one class of persons who have a right to petition, viz. electors. This change, however, will not, it is presumed, affect the necessity for the petitioner, if a voter, to allege in his petition that he voted, or had a right to vote at the election. As the right to contest the election is given to certain parties only, the title to petition ought to appear on the face of the proceedings.

Any objection to the mode of stating this title, and also to the possession of the title, may be taken before the Select Committee (*a*). *Boston*, 1 Peck. 434; *Drogheda*, K. & O. 200; *Middlesex*, 1 Peck. 301; *Cheshire*, P. R. & D. 215.

The petition is usually drawn in very general terms, and though the matters of complaint should be stated with distinctness, they need not be alleged with the technical accuracy required in legal proceedings.

In the *Cricklade case*, 4 Doug. 52, it was held that the allegation of "other undue, corrupt, and illegal practices," was sufficiently specific to let the petitioners go to proof of bribery against the sitting member. It may be observed, on this case, that the words "*corrupt and illegal practices*," are the words used in the preamble of the statute 2 Geo. 2, c. 24, to define the offence of bribery, and, therefore, the attention of the

(a) See Practice, *Prelim. Objections*, post.

sitting member may fairly be considered to have been directed to the nature of the charge he had to meet.

In the *Nairn case*, 3 Luders, 405, the petition complained that the votes of three persons named had been improperly received, and that by *these means* A. B. had been improperly returned, and then alleged that "the return of the said A. B. was brought about by *various illegal and unwarrantable acts and proceedings*, and the petitioners therefore think themselves much aggrieved, and apprehend that the said election and return, is an undue election and return." On the trial of the petition, the petitioners attempted, under these general words "*illegal and unwarrantable acts*," to attack the vote of a fourth person, not named in the petition. It was objected, that it was stated in the petition that by means of the reception of the three voters named, A. B. had been improperly returned, and that the general words, "*illegal and unwarrantable acts*," imported rather a charge against the returning officer, than against the votes. The committee *resolved*, "that under the peculiar circumstances of the petition, the counsel for the petitioners are not at liberty to enter upon the fourth vote (a).

In the *Canterbury case*, Clifford, 354, the petition charged bribery and treating against the sitting members, and alleged that they were thereby disabled and incapacitated from being returned. It then *prayed* that the election and return might be declared void, and asked for *such further relief as to the House should seem meet*: the committee upon objection taken to

(a) See also *Southampton*, 4 Doug. 144; *Colchester*, 1 Lud. 441.

the efficacy of these latter words, *resolved* "That under the allegation and prayer of the petition the counsel be allowed to go into evidence, the result of which may declare the unsuccessful candidates duly elected." There can be little doubt, however, that at the present day such a petition would not be considered as praying for the seat.

Under a general allegation in the petition "that the election and return of the sitting members were procured by bribery, treating, intimidation, undue influence and other illegal and corrupt means," the petitioners were allowed to go into evidence of a corrupt contract to purchase the return within the meaning of the 49 Geo. 3, c. 118 (a).

It would appear, from the report of a recent case, 2nd *Clitheroe* (b), that the petitioners had been there allowed to go into matters not mentioned in their petition. The petition, as there given, alleges "that it had been proved before a former committee which unseated Mr. W., that Mr. A. had been guilty of corrupt practices at the former election, at which Mr. W. was returned, and that he (A.) was thereby incapacitated and ineligible from sitting, &c." No evidence was given in support of this allegation. The conduct of Mr. A. had not been questioned on the former inquiry (c), for the first petition did not claim the seat for him; but the committee allowed evidence to be given of bribery and treating committed by A. at the former election. On turning, however, to the petition

(a) *Harwich*, 1853, 2 P. R. & D. 224.

(b) 2 P. R. & D. 276.

(c) 1st *Clitheroe*, 108 Jour. 292; 2 P. R. & D. 30.

itself (a) it appears that some important words contained in the petition have been omitted in the report. The petition alleged "That it was proved before the select committee, *and the fact was*, and became open and notorious to all parties that, at the said election in 1852, Mr. A. had been guilty of corrupt practices, &c."

It has been before pointed out (b) that in the *Coventry case*, P. & K. 345, where the allegation in the petition was "that the petitioners believe that Mr. B. *has not* the requisite qualification, evidence was allowed to shew that he had given in an insufficient particular in obedience to the Standing Order of 1717."

The petition ought to contain the general facts and circumstances, intended to be adduced before the committee, in order to invalidate the election or return. The circumstances intended to be relied on must not be introduced as matter of recital, but should be charged as matter of complaint. Where it was recited in the petition that certain persons were candidates at the election, and that one of them was Sir A. Hume, High Sheriff of the County of H., and the petitioner on the trial, attempted to shew that Sir A. H. was ineligible, because he was high sheriff, there being no other allusion to his ineligibility, except by the *description* in the recital, it was *resolved*, that the point could not be argued, as the ineligibility was not an *allegation* in the petition. *Petersfield*, 3 Doug. 3. So also where a petition *recited*, that the poll commenced at nine o'clock on certain days named, and closed on each of those days at the hour of three o'clock, but no *complaint* was made in the petition, that the time of

(a) 108 Jour. 571.

(b) *Ante*, 265

polling was shorter than was allowed by law; it was held that this was mere matter of *recital*, and not of *complaint*. *London*, 2 Peck. 271.

Variances in Petition.] A committee of the House of Commons is seldom disposed to attach importance to technical objections to the wording of the petition, or to variances between the allegations and the evidence, when no one can have been misled thereby. Where a petition alleged that the poll was taken on the 22nd June, but it appeared in evidence that it was taken on the 29th June, the committee without hearing the petitioner in answer to the objection, determined to proceed with the case. *Reading*, Bar. & Aust. 422 (a).

The petition ought to be addressed, as other petitions are, to the House of Commons; but if a petition not so addressed, has been received by the House, no objection can afterwards be taken to it on that ground before the committee. In a very recent case, *St. Alban's*, 1851, an objection was taken by the counsel for the sitting member, to the petition being considered by the committee; on the ground that it did not state on the face of it, to what tribunal it was addressed, inasmuch as the words "To the Commons of the United Kingdom in Parliament assembled," or words to that effect, were entirely omitted; the committee overruled the objection, on the ground that the fact of

(a) Objections to the *form* of election petitions are seldom made in modern times, as these documents are usually prepared by persons thoroughly conversant with the subject. A large body of precedents is to be found in the Journals of the House of Commons, particularly in those of the session following a general election.

the petition having been received by the House, sufficiently designated it as a petition to the House of Commons. See *Printed Minutes*, p. 4 (a).

Signature of the Petition]. The petition should be signed by the petitioners themselves, with their *names* or *marks*. By a resolution of the House, 1689, it was *resolved*, "That all petitions presented to this House, ought to be signed by the petitioners with their *own hands*, by their names, or marks." And it was by another resolution, in the year 1774, *resolved*, "That it is highly unwarrantable, and a breach of the privileges of this House, for any person to set the name of any other person to any petition presented to this House." Many cases are to be found in the Journals of the House of Commons, where election petitions have been rejected, on its appearing to the House that they have been improperly signed. See these collected in *Chambers's Dict. of Election Law*, p. 454. This matter was much considered recently, by a committee appointed to inquire into certain matters connected with the presenting of an election petition, against the *Aylesbury* election in 1851, when certain persons were reprimanded by the House for signing the name of another person as petitioner without his authority. See *Printed Report*, 1851.

When the signature of a person has been improperly affixed to a petition presented in his name, the House ought to be petitioned on the subject, that the election petition may be rejected by them. This may be done as in the *Aylesbury case* by the party whose name has

been improperly used, and also by the parties petitioned against. The House will then appoint a committee, to inquire especially into the matter. But it would appear, that when the petition has been dealt with by the House, as an election petition, and has been referred in due course, to a select committee for trial, it is then too late to take an objection to the signature to the petition. It is a matter of privilege, rather than one affecting the merits of the petition. In a recent case, the counsel for the sitting member required, that proof should be given that the petition was signed by the parties, whose names it bore; it was answered, that the petition having been regularly referred to the committee, by the proper authorities, it must have been treated by them as regular; the time for inquiring into its regularity, being before its reference to the committee. The committee were of opinion that the objection was one that could not be sustained. 2nd *Harwich*, 1851, *Printed Minutes* (a).

When the irregularity affects some only of the signatures to the petition it will be proceeded with as the petition of those who have actually signed it. *Seaford*, 3 Lud. 2; *Honiton*, 3 Lud. 143.

Interlineations]. It remains only further to be observed that care should be taken in the preparation of the petition, to avoid as much as possible, all interlineations and erasures:—as, if these occur they may afford ground for a preliminary objection. *Vide infra*, *Chapter on Practice*; and see *Southampton*, P. & K. 214; *Portarlington*, ib. 238; *Lyme*, Bar. & Aus. 456.

(a) 1 P. R. & D. 318.

3. *Who may Petition.*] Having thus briefly considered the substance, and form, of an election petition the next point to be considered is, who are the parties who by law are entitled to present such a petition these also are defined in the 2nd section of the 11 & 12 Vict. c. 98. The petitioner may be:—

- 1st. Some person who *voted*, or *had a right to vote* at the election to which the petition relates,
- 2ndly. Some person *claiming* to have a right to be returned, or elected at such election, or
- 3rdly. A person *alleging* himself to have been a candidate at the election.

If the petition be that of any person, other than one of those here described, it would be the ground of a preliminary objection before the committee. Therefore, if the petitioner, though claiming to have had a right to vote at the election, had really no right to vote, he would not be entitled to petition. In the *Aylesbury case*, 1848, 1 P. R. & D., 82, an objection was taken to proceeding with the petition, on the ground that the petitioner had no right to vote at the election. In another case, however, where the petitioner was on the register, and had voted, the committee would not allow the question to be raised. *Harwich*, 1848, *Printed Min.* In the *Chester County case*, 1848 (a) the petitioners were required to prove that they had a right to vote. As the person voting may have had no right to vote at the time of election, it would appear that the decision in the *Harwich case* was an incorrect one (b). It has been already observed, that

(a) 1 P. R. & D.

(b) Vide *infra*, Practice.

the petitioner ought to state in the petition, in what character he petitions. Committees, however, seldom require this to be done with technical accuracy. Thus, where it has been stated in the petition, that the petitioners were voters of the place, or had a right to vote at elections at the place in question, this has been held sufficient, though it was not stated, that they had a right to vote at the election in question. *Montgomery*, P. & K. 187; *Caermarthenshire*, 1 Peck. 287; *Boston*, Peck. 434; *Drogheda*, K. & O. 200. A stricter rule was laid down in the *Nottingham case*, C. & D. 197; but when it is remembered that this objection to the description of the character of the petitioners, was taken and allowed, after the committee had sat for five days trying the merits of the petition, it may well be urged that it is not a case of much authority. And that future committees are more likely to follow the course adopted by the *Montgomery* Committee, and to discountenance objections merely technical. Persons who have signed the return of the sitting member are not prevented, thereby, from petitioning against him. *Warwick*, P. & K. 537. But it has been held, that a person who has voted for the sitting member cannot be a petitioner against him. *Herefordshire*, 1 Peck. 210. Mr. Rogers observes, in a note to the *Warwick case*, cited above, "Whether a committee would allow a petitioner to be heard against the election of a member or members, for whom he had voted, is a different question, and did not arise in the *Warwick case*; yet, even then, if disqualifying facts come to his knowledge after he had voted, it would seem strange to estop him by his assent given in ignorance." *Rogers's Elect. Com.* p. 7.

It may be questioned whether the Select Committee has any power to refuse to enter upon the inquiry as to the merits of the election, on the ground that the petitioner has voted for the sitting member, even though, at the time of voting he knew of the disqualification. The petitioner may have received a bribe at the election, and have voted for the very purpose of afterwards questioning the election; this would make him an accomplice in the transaction, but it is not easy to see how it could estop him from disclosing the transaction if others were unwilling to do so.

A candidate, who when called upon refused to take the qualification oath, was held to have forfeited his claim to be a candidate, and that he could not petition in that character. *Penryn Minutes*, 1827; *Sandwich*, 26th May, 1808; *Great Grimsby*, 1813, cited in a note to the *Montgomery case*, P. & K. 169.

If a candidate has been pronounced by a committee of the House of Commons to have been guilty of bribery at a former election, and upon the vacancy thus created he stand again, he cannot appear in the character of a petitioner to contest the result of the second election. *Honiton*, 3 Lud. 163—165.

But a mere allegation on the part of the sitting member, that the petitioning candidate has been guilty of bribery, will not deprive him of his right to petition. *Taunton case*, 1831, Rogers, 63.

4. *The Recognizance* is the next thing to be considered:—By the 7 & 8 Vict. c. 103, s. 3, the petitioners, or some of them, were bound to enter into a recognizance together with sureties. This has been

altered in the recent statute (a). The petitioner is no longer required to enter into a recognizance, but it is enacted in sect. 3, that before any election petition can be presented to the House, a recognizance must be entered into by one, two, three, or four persons, as sureties for the person subscribing the petition, for the sum of 1000*l.* in one sum, or in several sums of not less than 250*l.* each, for the payment of all expenses which, under the provisions of the act, may become payable by the petitioner to any witness summoned in his behalf, or to the sitting member, or other party complained of in the petition, or to any party who may be admitted to defend the petition.

Form of.] The 5th section prescribes the form of the recognizance. It must mention the names, and usual places of residence, or business, of the sureties, with such other description as may be sufficient to identify them easily; a form is given in the schedule to the act; see App. The recognizance should be in this form, or to the same effect.

Affidavit.] Every person who enters into a recognizance, must *at the time* of entering into it, make an affidavit of his sufficiency, before *the person* who takes the recognizance; every such affidavit is to be annexed to the recognizance. (Sect. 4.) Every recognizance must be entered into, and every affidavit must be sworn, either before the examiner of recognizances or a justice of the peace; if before a justice of the peace, they must be duly certified under his hand, and delivered to the examiner of recognizances (b). (Sect 11).

(a) 11 & 12 Vict. c. 98.

(b) The words "taken and acknowledged before — on the — day of —, at, &c.," signed by a justice of the

The justice of the peace who takes the recognizance and affidavit, must have jurisdiction in the place where he takes them, or they will be invalid. *Carnarvon*, Bar. & Aus. 552; *Athlone*, 2 P. R. & D. 191. The recognizance and affidavit are, by the 106th section of this act, exempted from stamp duty.

Duties of Examiner.] The examiner of recognizances is an officer appointed by the Speaker during pleasure, to execute the duties of his office, under the direction of the Speaker. (Sect. 9.) The Speaker may, in case of the illness of the examiner, appoint a fit person to perform the duties.

A book is kept in the office of the examiner of recognizances, wherein must be entered, on or before the day when the petition is presented to the House, the names and descriptions of the sureties; this book, together with the recognizances and affidavit, are open to the inspection of all parties concerned. (Sect. 12.)

Payment in lieu of Recognizance.] Any person signing the election petition may, instead of having a recognizance entered into for him, pay into the Bank of England, to the account of the Speaker and examiner of recognizances, as trustees, the whole sum of 1000*l.*, or any part of it not less than 250*l.*, and then sureties will have to be provided, for so much only as the sum paid in falls short of 1000*l.* No money is to be deemed to be paid into the Bank for the purposes of the act, until a Bank receipt or certificate for the same is delivered to the examiner. (Sect. 6.) When the recognizances have been entered into in the manner here described, the examiner certifies the

peace, are a sufficient certificate of the recognizance. *Warren*, 297.

same on the back of the petition. It may then be presented to the House.

5. *Presentation of the Petition.*] The petition must be presented within the time, from time to time, limited by the House for receiving election petitions (11 & 12 Vict. c. 98, s. 2). The time so limited by the House is fixed by sessional orders passed at the commencement of each session: "That all persons who will question any returns of members to serve in Parliament, for any county, city, borough or place in the United Kingdom, do question the same within fourteen days next, and so within fourteen days next after any new return shall be brought in." That is to say, the petition must be presented within fourteen days after the date of this sessional order, or within fourteen days after a new return is brought into the Crown Office. This order is strictly enforced; the only exception allowed is when the fourteen days expire during an adjournment of the House, in which case the petition must be presented on the first day the House meets for business. 1 Doug. 84; 2 Peck. 334; *Seaford*, 1 Peck. 27; 2*nd Peterboro'*, 2 P. R. & D. 295 (a).

There is one class of election petitions, however, which may be presented at a later period than fourteen days after the return is brought in. They are petitions founded on the 20th section of 5 & 6 Vict. c. 102,

(a) When a petition has been presented against the return only, and the return has been amended, time is allowed to present a petition against such amended return. Bar. & Aust. 648, 680, *post*, "Practice."

alleging payment of sums of money to voters after the election. A sessional order to meet cases of this description has been passed in each session since 1842. "*Ordered*, That all persons who shall question any return of members to serve in the present Parliament, upon any allegation of bribery and corruption, and who shall *in their petition specifically allege* any payment of money or other reward to have been made by any member, or on his account or with his privity, since the time of such return, in pursuance or in furtherance of such bribery or corruption, may question the same at any time within twenty-eight days after the date of such payment; or, if this House be not sitting at the expiration of the said twenty-eight days, then within fourteen days after the day when the House shall next meet."

A petition of this kind, presented after the time when election petitions are usually presented, will affect the seat of the sitting member. *Durham*, Bar. & Arn. 201 (1843); *2nd Athlone*, Bar. & Arn. 225 (1844.)

6. *Proceedings after presentation of Petition.*] When the petition has been received by the House, no further steps are taken in the House with regard to it, until the examiner of recognizances has reported to the Speaker on the sufficiency of the recognizances. The next matter, therefore, to be considered is the mode of proceeding with regard to the recognizances. During the session of 1848 considerable perplexity was created by the form in which some of the recognizances were drawn, and such doubts were entertained as to the validity of several of them, that a temporary act,

11 Vict. c. 18, was passed, enabling the parties to put in amended recognizances.

The 7 & 8 Vict. c. 103, s. 14, the act in force at that time, enabled the examiner to inquire into the alleged insufficiency of the sureties only, and not into the validity of the recognizance itself; but by sect. 13 of the present act, the examiner is enabled to inquire into the validity of the recognizances as well as into the sufficiency of the sureties; and as his report on these points is, by sect. 13, made *final and conclusive to all intents and purposes*, the same questions which perplexed the House and committees in the session 1848, cannot arise again.

7. *Who may object, and grounds of objection to Recognizance.*] The sitting member petitioned against, and electors admitted as parties to defend the election or return (sect. 19), in the manner hereafter to be considered, *may object* :

1. That the recognizance is invalid;
 2. That it was not duly entered into or received by the examiner of recognizances, with the affidavit annexed;
 3. That the sureties, or any of them, are insufficient;
- or,
4. That a surety is dead; or,
 5. That from the want of a sufficient description he cannot be found or ascertained; or,
 6. That a person named in the recognizance has not duly acknowledged the same (*a*).

(*a*) The following are given by Mr. Warren in his work on Elections, p. 297, as some of the points decided by the

Mode of objecting..]—The grounds of objection intended to be relied on must be stated in writing, under the hand of the objecting party or his agent, and must be delivered to the examiner of recognizances within ten days, or not later than twelve at noon of the eleventh day, after the presentation of the petition, if the surety objected to resides in England, or within

examiner of recognizances in 1852: That a recognizance which follows the form in the schedule to the act, using the terms "sitting member," although there may be two or more sitting members, is *good*; that a recognizance which departs from the form using the words "sitting members," not adding "and each" or "either of them," is *bad*; that one using the words "sitting members or either of them," is *good*; that a misdescription in the recognizance of the surety's name, residence, or description, can be objected to only on the ground given in the 13th section, "that the surety cannot be *found or ascertained* from the want of a sufficient description;" that it is not necessary and is no ground of objection, that it does not expressly appear that the recognizance and affidavit were entered into before a justice at the same time, the two bearing the same date; that a recognizance following the form, conditioned to pay the costs "payable by the petitioners," without adding "or either of them," is *good*. See *Gordon v. Gurney*, 2 C. & J. 614. That the interpretation clause, sect. 108, applies to the form in the schedule; that a recognizance which misdescribes the place to which the petition relates, if it follows the description in the petition itself, is *good*; that there must be one, and cannot be more than one recognizance in respect of each petition; that no objection can be taken to the validity of the affidavit, or jurat, or caption thereof, under the 13th section, but only to the recognizance; that the word "person," named in the recognizance, means the surety.

In the session of 1853, a select committee was appointed to inquire into the operation of the act 11 & 12 Vict. c. 98, as regards recognizances, and to report their opinion whether it was expedient to amend that act (108 Jour. 185. 284). It does not appear that any report was ever made.

fourteen days, or not later than twelve at noon of the fifteenth day, if such surety reside in Scotland or Ireland; and if the eleventh or fifteenth day respectively fall on a Sunday, Good Friday, or Christmas Day, such notices of objection may be delivered by twelve at noon on the following day. (Sect. 13.)

As soon as the examiner of recognizances has received any such notice of objection he is to post up an acknowledgment thereof in some conspicuous part of his office, and must appoint a day, not less than three, nor more than five, from the day on which he received the statement, for the purpose of hearing the same (a). The petitioner and his agent may examine and take copies of every such objection. (Sect. 14.)

At the time appointed, the examiner is to inquire into the alleged objections on the grounds stated, but on *no other*; he may examine on oath, and receive any affidavit relating to the matter, sworn before a Master in Chancery, or justice of the peace, and duly certified; he may adjourn the inquiry from time to time until he decides; he may award costs, to be paid by either party, to be taxed as in other cases.

And the decision of the examiner is *final and conclusive against all parties*. (Sect. 15.)

Where one ground of objection is the death of a surety, the petitioner may cure this objection by paying into the Bank of England the sum for which the surety was bound, and giving to the examiner, within three days after the day on which the statement of objections is delivered to him, the bank receipt for the amount.

(a) If the fifth day is a Sunday the hearing may be on the sixth day.

Report of Examiner.] If the examiner shall decide that the recognizance is objectionable, he is forthwith to report the same to the Speaker.

But if he shall find it unobjectionable, or if no objections have been received by him within the time for lodging objections, then he is to report to the Speaker that the recognizance is unobjectionable; and every such report shall be *final and conclusive to all intents and purposes*. (Sect. 17.)

The examiner is to keep in his office, open to the inspection of all parties concerned, a list of all petitions on which he shall have reported the recognizances to be unobjectionable.

Every report of the examiner of recognizances is to be communicated by the Speaker to the House, and also to the general committee of elections, to whom election petitions are referred in the manner hereafter to be considered under the head of "Committees" (Sect. 46.)

8. *Renewed Petitions no longer necessary.*] Until recently, if a petition had not been taken into consideration in the course of the session in which it was presented, it was necessary to have a renewed petition, and questions of difficulty often arose, whether the new petition was the same in substance as the original one in the former session (*a*). This has now been altered, no renewed petition is now necessary. It is provided by the 50th section of 11 & 12 Vict. c. 9 that if Parliament is prorogued after any election petition has been presented, but before the appointment

(*a*) Orme on Elections, p. 333 ; Rogers, p. 20.

select committee to try the petition, the general committee of elections appointed in the following session shall, within two days after their first meeting, in case the sureties are reported unobjectionable, appoint a day and hour for selecting a committee to try the petition so standing over.

9. *Petitions in case of Double Return.*] There is one case, viz., that of a double return, for which particular provision has been made by the Legislature. Cases of double return used formerly to arise from disputes as to who were the proper returning officers. *Fowey*, Peck. 523; *Downton*, 3 Lud. 173; *Oakhampton*, Frazer, 69.

Questions of this kind are not likely to arise at the present day; but the case of a double return arising from an equality of votes does occasionally occur. *Montgomery Boroughs*, 103 Journ. 218 (1848). On that occasion some difficulty was felt as to the right course to be adopted; and, in consequence, provision was made in the 11 & 12 Vict. c. 98, s. 21, for the mode of proceeding in cases of double return. All that need be observed in this place is, that they who complain of a double return must prepare and present their petition as in other cases of election petitions. If both the parties returned intend to contest the right to the seat, the proper course will be for each to petition against the return of the other (a).

For, suppose the case of A., B., and C., returned on an equality of votes. If C. alone were to petition against the return of A. and B., and to unseat B.

(a) *Knaresborough*, 2 P. R. & D. 210.

unless B. had petitioned against the return of A., may be doubtful whether he would be allowed afterwards to attack the seat of A. When there is *double return*, neither of the members can vote until the right to the seat has been determined; because both are of course precluded from voting, where only one ought to vote, and neither of them has a better claim than the other (a).

It remains only here to be observed, that care should be taken that such a number of persons should be included in the petition, as petitioners, that the risk of being defeated, either by accident or collusion, may be avoided; for when the time limited by the House for the reception of election petitions has expired, though the petitioner should die, or withdraw his petition in collusion with the sitting member, no fresh petition would be received by the House to attack *the seat*. Though, in this latter case, the parties might, under sect. 6 of 5 & 6 Vict. c. 102, present a petition complaining of extensive bribery if the original petition had contained charges of bribery. *Vide post*.

Having now considered who may attack the election or return, and the mode of preparing and presenting the election petition, we come next to consider who may oppose the prayer of the petition, and defend the election or return.

10. *Who may defend the Election or Return.* *Prima facie*, the person whose seat is attacked is the person to oppose the petition, and defend his election. But as circumstances may arise which may

(a) May's Law of Parliament, p. 344.

prevent him from defending his seat, or as the electors may have such an interest in the election that they are willing to join with the member in defending his election, or to undertake the sole defence of the seat when the member is unwilling to do so himself, provision has been made to enable electors to come in and defend the seat, together with the sitting member, or in his place when he is unable or unwilling to defend it. Sect. 19 of 11 & 12 Vict. c. 98.

The parties, therefore, who may defend, are the member himself, or electors who voted, or had a right to vote at the election.

Electors may join with the sitting member in the defence of the seat, if within fourteen days after the presentation of the election petition they petition the House to be admitted to defend the election or return, or oppose the prayer of the petition; and their petition will be referred by the House to the general committee of elections.

Electors may also defend by themselves in lieu of the member returned, where the seat is vacant, or the member declines to defend (*a*).

1st. *Where seat vacant.*] Where it happens that the seat becomes vacant by the death of the member or from his being summoned as a Peer of Parliament, or from the House having resolved that the seat of any member petitioned against has by law become vacant, in these three cases, electors may be admitted to oppose the prayer of the petition. It is obvious that it is only

(*a*) Electors may appear to defend not only without, but against the consent of the sitting member, who declines himself to defend. *Wigan*, B. & Arn. 788.

where the petition claims the seat for the unsuccessful candidate that electors are likely to pray to be admitted to oppose the election petition under these circumstances: for as in these three cases cited the member has ceased to represent them, they can have no interest to defend his return.

2ndly. *When Member declines to defend his Seat.* In this case also electors may be admitted to defend the seat.

The mode of proceeding where electors wish to defend the seat together with the sitting member, or by themselves, when the member declines to defend his election, or the seat is vacant, is very clearly pointed out in the 18th and 19th sections of the 11 & 12 Vict. c. 98.

In the case of the *vacancy* of the seat (which is to be communicated to the Speaker by written certificate signed by two members), or if the member gives notice to the Speaker within fourteen days after the presentation of the petition that it is not his intention to defend his return, the Speaker immediately gives notice to the general committee, the members of the Chairman's panel, the sheriff, or other returning officer, and publishes it also in one of the next two *London Gazettes*, and communicates the fact to the House. The Sheriff or returning officer publishes this notice sent to him on or near the door of the County Hall, or Town Hall, or of the parish church nearest to the place where the election has usually been held, (sect. 18): and then electors who have voted, or had a right to vote at the election, may, if they petition within twenty-one days after the notice appeared in the *Gazette*, be admitted to defend the election or return. Every petition of

electors praying to be admitted to defend the return, or oppose the prayer of the petition, is referred to the general committee of elections. (Sect. 19.)

Where one of the sitting members who was himself defending his seat died pending the inquiry before the committee, the case being one of scrutiny, the committee refused to adjourn to enable electors to petition to be allowed to defend the return. *Dublin, Fal. & F.* 151.

11. *Defence of Seat in case of Double Return.*] The party whose return is complained of, or electors with him or on his behalf, may defend the return; but if the member whose return is complained of declines to defend, and if no one be admitted to defend within the time, that is to say, the said two periods of fourteen days, and twenty-one days (sect. 19); then if there is no petition against the other member returned on such double return, the last mentioned member, or the electors petitioning on his behalf, may withdraw their petition, whereupon all proceedings on the petition will cease, and the necessary directions will be given by the House for amending the return by taking off the file the indenture by which the person declining to defend was returned. (Sect. 21) (a).

12. *Withdrawal of the Petition.*] The petitioner may at any time after the presentation of the petition withdraw the same, upon giving notice in writing under his hand, or under the hand of his agent, to the Speaker, and to the sitting member or his agent, and to any person

(a) *Knaresborough*, 2 P. R. & D. 210.

who may have been admitted to oppose the prayer of the petition, that it is not intended to proceed there with. In such case the petitioner will be liable to the payment of such costs and expenses as have been incurred by the parties opposing the petition, to be taxed as in other cases. (Sect. 8). The withdrawal of one of two petitioners does not affect the *locus standi* of the other; *Athlone*, Bar. & Aust. 662; nor does it alter the position of the sureties.

The power which petitioners possess of withdrawing their petitions at any time before the select committee is appointed to try them is often much abused. It has happened, not unfrequently, that petitions have been presented, not for the purpose of being tried, but in order that they may be a set-off against other petitions when it is proposed to compromise them. In the session of 1858, select committees were appointed on several occasions to inquire into the circumstances attending the withdrawal of certain election petitions. In one of these cases (a) the committee, after acquitting the persons engaged in the transaction of any corrupt or unworthy motives, reported, "that the withdrawal of the petition in question formed part of an arrangement and compromise entered into between the agents managing the several election petitions for their respective parties in the House, in pursuance of which arrangement *eight* petitions were simultaneously withdrawn implicating the seats of *ten* members." The report concluded thus: "Your committee think it right to direct the serious attention of the House to the facility that at present exists for originating and withdrawing

(a) *Norwich*, Pr. Mins. 108. Journ. 346.

election petitions, and to the public scandal that is notoriously created by the process of what political partisans, and the parties professionally engaged therein, term 'pairing off petitions,' which abuse takes place under cover of the 8th section of the Election Petitions Act, 1848; and whether it is not desirable that such alterations should be made in the said law as shall prevent the continuance of a system which, in the opinion of your committee, is calculated to cause injustice and expense to innocent parties, and to bring the proceedings of this branch of the Legislature into contempt, as restricting this House in the exercise of the power of administering relief which the law, through the medium of election petitions, was specifically passed to afford" (a).

In another case (b) the select committee appointed to inquire into the circumstances attending the withdrawal of a petition, after stating the facts, reported, "Your committee regard with much disapprobation an attempt made on the one side to get rid of opposition to a candidate by the threat of a petition; and, on the other, the defeat of that petition by presenting another, the prayer of which was avowedly fictitious and illusory, and calculated to interfere with the rights of a constituency, by inducing Parliament to delay the issue of the writ: your committee are of opinion that the state of the law which permits the valuable right of petitioning to be perverted from a remedy for public wrong into a weapon of electioneering warfare, deserves the serious consideration of the House."

(a) *Norwich Election Petitions*, 108 Journ. 346. See also *Berwick*, ib. 593.

(b) *Durham*, ib. 605. See Pr. Mins.

CHAPTER VI.

COMMITTEES.

IN order to prevent the general complaints of partiality and incompetence that used to be made against committees, while they were appointed under the system of the ballot, a very beneficial change was introduced in the year 1839, when a new machinery was established for the construction of election committees. The principle of that system has been preserved, but gradually improved, by the different enactments which have passed from that year down to the year 1848, when the act now in force was passed (a).

The first step taken towards the constitution of the election committee is the appointment of the general committee.

The General Committee.] In the *first* session of every new Parliament, on the day after the last day allowed for receiving election petitions, and in every *subsequent* session, as soon as convenient after the commencement of the session, the Speaker appoints by warrant under his hand six members, willing to serve,

(a) 11 & 12 Vict. c. 98.

who are neither petitioned against, nor petitioners in any election petition, to constitute the general committee of elections. This warrant is laid on the table of the House; and if not disapproved of by the House in the course of the three next days on which the House meets for the dispatch of business, takes effect as the appointment of the general committee. (Sect. 22).

If the warrant is disapproved of in whole as to all the members, or in part as to some of them, the Speaker, on or before the third day on which the House meets after such disapproval, lays upon the table a new warrant, which may contain the name of any member included in the former warrant who has not been specially disapproved of. (Sects. 23, 24, 25).

The appointment is to continue for the session, unless any member of the committee resign his appointment, or is prevented by continued illness from attending (sect. 26). When a vacancy occurs in the general committee, the Speaker is to inform the House, the proceedings of the committee being in the mean time suspended. (Sect. 27).

The general committee is to be forthwith dissolved, if the committee shall report the continued absence of more than two members, or that, by reason of irreconcilable difference of opinion, they are unable to proceed in the discharge of their duties,—or if the House itself resolve that the committee shall be dissolved. (Sect. 27).

When a vacancy in the committee is to be supplied, or a re-appointment to be made on the dissolution thereof, the Speaker appoints by warrant, subject to disapproval as in the case of the original appointment of the committee; on a re-appointment, the Speaker

may, if he thinks fit, re-appoint any of the members of the former committee, who are then willing and not disqualified to serve.

If, at the time of the suspension of the proceedings or dissolution of the general committee, there be any business appointed to be transacted by them on any certain day, the Speaker may adjourn the transaction of such business to such other day as may to him seem convenient. (Sect. 36).

The committee meet at the time and place appointed by the Speaker, the members of it having first been sworn at the table of the House, by the clerk, truly and faithfully to perform the duties belonging to a member of the said committee, to the best of their judgment and ability, without fear or favour. (Sect. 30).

Four members of the general committee must be present for the transaction of all business before them. (Sect. 31.) The general committee subject to the provisions of the act may make regulations for the conducting of the business before them. (Sect. 32).

The committee is to be attended by one of the committee clerks, to be selected by the clerk of the House. The committee clerk is to make a minute of the proceedings of the committee, a copy of which is from time to time to be laid before the House. (Sect. 33).

All election petitions received by the House and referred by the House to the general committee, in order that select committees may be appointed to try them. (Sect. 46). Every report of the examiner of recognizances concerning the recognizances, is communicated to the general committee, as well as to the House (ib.) Whenever a petition is withdrawn, or the examiner of the recognizances reports that the recog-

izances are objectionable, the order referring the petition to the general committee is discharged (a).

Lists of Petitions.] A list is made out by the general committee of all election petitions, in which the recognizances are reported unobjectionable, and in which the proceedings are not suspended, as mentioned below, in the order of reporting. If the proceedings afterwards are suspended, the petition is struck out, and re-inserted at the bottom of the list of petitions at the end of such suspension. (Sect. 46).

Proceedings when Suspended.] If the general committee receive notice of the death, or vacancy of the seat, of a member petitioned against, or that it is not his intention to defend his seat, the proceedings on that petition are suspended for twenty-one days, after notice has been inserted in the *Gazette* of such vacancy, or intention not to defend, (sect. 18), unless the petition of some party admitted to defend, be sooner referred to them. (Sect. 47).

If more than one election petition relating to the same election, has been referred to the general committee, they wait until the report of the examiner of recognizances on all the petitions has been received, on receipt of the last report, the petitions are then placed at the bottom of the list, bracketed together, and afterwards dealt with as one petition. (Sect. 48).

If no one appears to defend.] When the member returned is either unable, or unwilling to defend his return, and the due notice has been given, at the expiration of the twenty-one days, allowed for electors to come in to defend, if no parties appear to defend, the

(a) Unless the petition is withdrawn it *must* be referred to the General Committee, *Belfast, B. & Aust. 554.*

petition need not be inserted in the list of petitions by the general committee ; but the committee may at once appoint a select committee to try the petition, if the conduct of the returning officer is not complained of in the petition, on giving one day's notice in the votes of the time and place appointed for choosing the select committee ; no list of voters intended to be objected to need in this case be delivered to the clerk of the general committee. (Sect. 52).

Select Committee.] The next thing to be considered is the mode of forming the select committee. In the work of Mr. *May*, on the Law and Usage of Parliament, p. 360, there are some useful observations. "It may prove useful to call the particular attention of members to the necessity of making themselves acquainted with the practice of the House, in appointing select committees, and with their own position and liability ; if they neglect to attend at the proper time (as they too often do), they subject themselves to annoyance and expense, and may cause serious pecuniary damage to the parties. By a little attention to the course of proceedings, a member may always avoid being taken by surprise. He should first examine the panels which are printed and distributed with the Votes, and by observing the number of that in which his own name is inserted, he may judge how soon it is possible that he may be chosen. He must bear in mind that a new panel is in the order of service for every week, in which election committees are appointed, and if his absence should be unavoidable during the week, in which committees will be chosen from his panel, he should apply to the House for leave of absence."

Formation of.] In the *first* session of every new

Parliament, on the next meeting of the House after the last day allowed for receiving election petitions, and in every *subsequent* session, on the next meeting of the House, after the Speaker has laid on the table his warrant for the appointment of the general committee, the clerk of the House is to read over the names of members claiming to be wholly excused from serving on election committees (a). (Sect. 36).

Members wholly excused.] Every member more than sixty years old, is to be wholly excused from serving on election committees, if he make his claim in or before the reading over of the list; or if he afterwards become entitled to make such claim, by declaring in his place, or by writing under his hand to be delivered at the table, that he is more than sixty years of age; but no such claim will be allowed unless made before such member is chosen to serve. (Sect. 35).

Members temporarily excused.] A member having leave of absence is excused during such leave; a member is excused, if upon reason offered at the reading over such names, or at any other time the

(a) The following excuses have been allowed by the House:—The having tendered a vote at the election (Jour. 38, 645), having voted, is now an express disqualification.

Members employed in public service, and *stating upon oath* that it would be injurious to the public if they were compelled to serve. Cabinet Ministers, Attorney and Solicitor General, Master of the Rolls. The being ordered on foreign service a sufficient excuse. (Jour. 60, 67, 68, 299, 314). Serving on a grand jury (58, 139). An alderman on the rota at the Old Bailey. (Jour. 23, 955). A candidate at the election. (Jour. 68, 222). 2 Rogers, p. 35.

House resolve that such member ought to be excused. The excuse must be made before being elected to serve on a committee, and the substance of it must be taken down by the clerk to be afterwards entered in the Journals. Every member who has served on one election committee, and who has not been excused from serving during any part of its sittings, and who within seven days after such committee shall have made its final report, shall notify to the clerk of the general committee his claim to be excused, will be excused from serving again during the remainder of the session, unless the House upon the report of the general committee shall resolve that the number of members who have not served is not sufficient. (Sect. 37).

Members temporarily disqualified.] Members are temporarily disqualified from serving on election committees who are petitioners, or petitioned against in an election petition, pending the proceedings on the petition. (Sect. 38).

List of Members liable to serve.] The clerk of the House is to make out an alphabetical list of all the members of the House, omitting the names of such as have claimed to be *wholly* excused; the clerk must also distinguish in such list the name of every member for the time being excused, or disqualified, and must also note the cause of such temporary excuse or disqualification, and the duration thereof. (Sect. 39).

This list, and also the names of all the members omitted from it, are to be printed and circulated with the Votes. (Sect. 39).

The list may be further corrected for three days after the distribution of it, by leave of the Speaker. (Sect. 40).

Formation of Chairmen's Panel.] When the list shall have been finally corrected, it is to be referred to the general committee of elections, who thereupon are to select *six, eight, ten, or twelve* members to serve as chairmen of election committees. (Sect. 41). In case, at any time, it appear to the general committee that the chairmen's panel is too small, they may add *two, four, or six* additional members; but it must not consist of more than *eighteen*, without leave of the House. (Sect. 45).

If at any time there are vacancies in the chairmen's panel, the general committee are forthwith to select other members to be placed thereon. (Sect. 45).

Service of Chairmen.] So long as the name of any member is on the chairmen's panel he is not liable or qualified to serve on an election committee otherwise than as chairman. (Sect. 41).

He is bound to continue upon the panel until the end of the session, unless by leave of the House he is discharged from it.

A member of the chairmen's panel, who has served *throughout* one or more election committees, upon notifying his claim to be discharged from such panel to the clerk of the general committee, will be excused from serving either as chairman, or otherwise, during the session. (Sect. 41).

The members upon the chairmen's panel may make regulations for the convenient selection of chairmen, and for distributing the duties of chairmen among themselves. (Sect. 59).

Division of List into Panels.] After the chairmen's panel has been selected, the members remaining on the list are to be divided by the general committee

into five panels, each containing, as nearly as may be, the same number of members. The division, when made, is to be reported to the House. (Sect. 42).

These panels may be *corrected* from time to time by the general committee, by striking out the names of those ceasing to be members, of those wholly excused, and by inserting in one of the panels (at their discretion) the name of every new member liable to serve the names of those temporarily excused or disqualified must be distinguished. (Sect. 43).

Order of Panels.] The clerk is to decide by lot at the table of the House, the order of the panels, and distinguish each panel by a number, according to the order in which they are drawn.

The panels are then to be returned to the general committee, and from these panels the members to serve on election committees will be chosen. (Sect. 42).

Whenever any alteration or correction is made in the panels by the general committee, they are to report it to the House; and the panels so corrected are printed and distributed with the Votes. (Sect. 43).

In case any members have leave of absence for a limited time, their names may be transferred from one panel to another subsequent in rotation. (Sect. 44).

Appointment of Select Committee.] As has been already observed, the general committee are, by sect. 46, required to make out a list of all the petitions, in which the recognizances have been reported unobjectionable; upon them also devolves the duty of choosing the select committees, to try the petitions. They must, in the first place, determine how many committees for trying petitions shall be chosen in each

week, and then appoint the days on which they are to meet to choose such committees, having regard to the number of committees then sitting, and the number to be appointed; they then report to the House the days appointed for choosing the committees: the committees are to be chosen to try petitions in the order in which these stand in the list. (Sect. 49).

Notice of choosing Committees.] Notice of the time and place at which the select committee will be chosen must be *published with the Votes not less than fourteen days (a)* before the day on which such committee is appointed to be chosen. The notice is to direct all parties interested to attend the general committee by themselves, their counsel or agents (*b*).

If the conduct of the returning officer is complained of, a notice is to be sent to him through the post, not less than fourteen days before the day appointed for choosing the committee (*c*). (Sect. 51).

(a) Where the notice of choosing two select committees had been sent to the Vote Office on the 10th of March, and published in the Votes on the 11th of March; the day appointed for choosing being the 25th of March, it being moved in the House that the appointment of the committees was void, because there had not been fourteen clear days between the publication and the day of choosing, the House decided on a division by 204 to 79, that the appointment was valid. *Aylesbury and St. Alban's*, 28th March, 1851; 105 Hansard, 722.

In the *Truro case*, Cor. & Dan. 175, the committee decided on a question whether the lists of objected voters had been delivered in time, that "*five days at least*" meant five clear days, exclusively of the day of delivery, and the day of the meetings of the committee. (See *Athlone*, B. & Arn. 124).

(b) See Form in Appendix.

(c) *Harwich*, July 1851.

If the proceedings become suspended, notice is immediately to be published, with the Votes and sent to the returning officer, if he be complained of. (Sect. 51).

The general committee may change the day and hour of choosing the select committee, and appoint some subsequent day and hour, giving notice in the Votes, and reporting to the House the reason of the change. (Sect. 53).

Notice must be given in the Votes, of the petitions appointed for each week, and of the panel from which the committees will be chosen. (Sect. 54).

Mode of choosing Select Committee.] On the day appointed, the general committee are to meet and proceed to choose the select committee, by selecting from the panel, *next in order of service, four* members, not then excused or disqualified, for any of the causes before mentioned, and not specially disqualified for any of the following causes; (that is to say),

By reason of having voted at the election;

By reason of being the party on whose behalf the seat is claimed; or

By reason of being related to the sitting member, or party on whose behalf the seat is claimed, by kindred or affinity, in the first or second degree according to the canon law. (Sect. 56).

In case *four* members of the general committee then present do not agree in choosing a committee to try any petition appointed for that day, the general committee are to adjourn the choosing of that committee and the remaining committees appointed to be chosen on that day to the following day, and the parties are to be directed to attend on such following day

for that purpose, and so from day to day until all such committees are chosen, or until the general committee be dissolved. (Sect. 57).

The committee are not in any case to proceed to choose a committee to try an election petition, until they have chosen a committee to try every other petition standing higher in the list, the order for referring which has not then been discharged, except where the day originally appointed for choosing the prior committee shall have been changed as before mentioned. (Sect. 57).

Mode of appointing Chairman.] On the day appointed for choosing a select committee, the members who are upon the chairmen's panel are to select one of their number to act as chairman of such select committee, and when they are informed by the general committee that four members have been chosen to compose such select committee, they are to communicate to the general committee the name of the chairman whom they have selected to act as chairman of the select committee. The chairman must be one not disqualified for any of the causes already given. (Sect. 58).

Select Committee may be objected to.] When the select committee has been thus constituted, the parties in attendance are called in before the general committee, and the names of the four members and the chairman are read over to them. (Sect. 60).

The parties then withdraw while the general committee proceed to choose another select committee, if the choosing of any committee is adjourned as mentioned before, the general committee can transact no more business on that day except with regard to

those committees which have already been chosen (Sect. 61).

Within *half an hour*, at furthest, from the time when the parties have withdrawn, or if the parties to any other election petition shall then be before the general committee, then when such other parties shall have withdrawn, the parties in attendance are again called before the general committee in the same order in which they were directed to withdraw, and the parties, their counsel or agents beginning on the part of the petitioners, may object to all or any of the members chosen or to the chairman selected, as being then disqualified or excused for any of the reasons before mentioned, but for no other (sect. 62). (See sect. 56, *ante*, as to causes of disqualification).

If at least four members then present of the general committee, are satisfied that any member objected to is disqualified, or excused, the parties again withdraw, and the general committee choose another committee from the same panel, if the member considered by the general committee to be disqualified is the chairman, his name is sent back to the chairman's panel, who thereupon select another chairman, and so on as often as the case may happen. (Sect. 63). In choosing a second committee to try the petition, the name of any member included in the first, may be chosen again if no objection has been substantiated against him, and no objection can then be heard against him. (Sect. 64).

Notice to the Members chosen.] The four members and the chairman having thus been chosen, the clerk of the general committee gives notice thereof in writing to each of the members so selected, and sends with such notice, a notice of the general and special grounds

of disqualification and excuse, already mentioned, and also of the time and place, when and where the general committee will meet on the following day: the notice of the time and place of such meeting is also published with the Votes. (Sect. 65).

Excuse on part of Member chosen.] The general committee meet at the time and place appointed, and if any member so chosen, shall prove to the satisfaction of at least *four* members of the general committee, then present that for any of the reasons before mentioned, he is disqualified, or excused from serving, or if he can shew any special circumstances affecting, not his own convenience, but the *impartial character* of the tribunal, then the committee proceed to choose a new committee to try the petition, in like manner as if that member had been objected to by one of the parties (*a*). If within a *quarter* of an hour after the time mentioned in the notice, no member shall so appear or if appearing he fail in proving his disqualification, or excuse, the select committee shall be taken to be appointed. (Sect. 66).

Names reported to the House.] At the meeting of the House for the dispatch of business, next after any such select committee shall have been appointed, the general committee report to the House, the names of

(a) There is no provision in the act directing the attendance of parties when a member claims exemption from serving before the general committee. If the general committee, therefore, proceed at once to nominate a fresh committee, it would appear that this might be done in the absence of the parties, and though the same members were nominated, with the exception of the one claiming disqualification, the member substituted in his place might be liable to objection.

the select committee appointed, and annex to such report all petitions referred to them by the House which relate to the return or election, to try the merits of which, such select committee has been appointed, and also all lists of voters (*a*) which have been delivered to them by either party; such report is to be published with the Votes.

Committee sworn.] At, or before four o'clock, of the day on which the House meets for business, next after such report from the general committee, the five members chosen are to attend in their places, and are sworn before departing the House by the clerk at the table.

"Well and truly to try *the matter of the petition referred to them*, and a true judgment to give according to the evidence."

They are *then* to be taken to be a select committee *legally appointed*, to try and determine the merits of the return, or election so referred to them, and the *legality* of such appointment is not to be called in question on any ground whatever (*b*). The members so chosen, must not depart the House until the time for the meeting of such committee has been fixed by the House. (Sect. 68).

Members not attending to be Sworn.] If any member shall not attend in his place, within *one* hour after four o'clock on the day appointed for swearing the committee, or if after attending, he departs the House before the committee is sworn; unless the committee

(*a*) As to the delivery of lists of voters, see "Practice."

(*b*) "Practice," *post*.

be discharged, or the swearing of the committee be adjourned as after mentioned, he is to be ordered to be taken into the custody of the Serjeant-at-Arms, for such neglect of duty, to be otherwise punished or censured at the discretion of the House; unless it shall appear to the House, by facts specially stated and verified upon oath, that such member was prevented from attending by sudden accident or necessity. (Sect. 69.)

If any such absent member shall not be brought into the House, within *three* hours after four o'clock, on the day first appointed for swearing the committee, (if the House sit so long, or if not, within the like time on the following day), and if no sufficient cause is shewn to the House before its rising, whereon the House shall dispense with the attendance of such absent member, the swearing of the committee is to be adjourned to the next meeting of the House, and all the members of the committee are bound to attend in their places, for the purpose of being sworn at the next meeting of the House, in like manner as on the day first appointed for that purpose. (Sect. 70.)

But if on the day to which the swearing of the committee shall be adjourned, all the members of the committee shall not attend and be sworn within *one hour* after four o'clock; or if on the day first appointed for swearing the committee, sufficient cause be shewn to the House before its rising, why the attendance of any member should be dispensed with, the committee is to be taken to be discharged; and the general committee shall meet on the following day, or if the House be adjourned to a later period, then on the day to which the House shall stand adjourned, and shall proceed to

choose a new committee, from the panel on service *for the time being*. Notice of such meeting of the general committee is to be published with the Votes. (Sect. 71)

Meeting of Select Committee.] When the select committee has been sworn, all petitions and lists annexed to the report of the general committee are referred by the House to them; and the House fixes a time for their meeting, which must be within twenty-four hours of their being sworn unless Sunday, Christmas Day, or Good Friday intervenes. (Sect. 72).

At the time appointed, the select committee must meet, to try the merits of the petition referred to them and must sit from day to day (Sunday, Christmas Day and Good Friday only excepted). (Sect. 73).

No member of the select committee may absent himself without the previous leave of the House, or an excuse allowed by the House, at its next sitting, for the cause of sickness verified by the oath of his medical attendant, or for other special cause shewn and verified upon oath. When a member has been thus excused he is discharged from further attending, and cannot afterwards sit or vote on that committee. (Sect. 75).

All the Members must be present.] The committee is never to sit until all the members (not being excused) are present. In case all the members do not meet within *one hour* after the time appointed for the first meeting of the committee, or within *one hour* after the time to which the committee is adjourned, a further adjournment is to be made and the chairman is to report the circumstances to the House. (Sect. 75).

The member so reported absent will be directed to attend the House at its next meeting, and will then be ordered into the custody of the Serjeant-at-Arms.

to be punished, or censured in the discretion of the House; unless it shall appear to the House, by facts, specially stated and verified upon oath, that such member was prevented from attending the select committee by a sudden accident or necessity. (Sect. 76).

Adjournment of Committee.] The committee must meet daily, and cannot adjourn for a longer time than *twenty-four hours* without leave first obtained (a) from the House, upon motion with special cause assigned; Sunday, Christmas Day, or Good Friday intervene the committee may adjourn over those days in addition to the *twenty-four hours* (b).

(a) When a committee adjourns to a period within the twenty-four hours, and then obtains leave of the House to adjourn for a longer period, when that leave has been granted they must meet at the time to which they originally adjourned, in order then to adjourn for the time allowed by the House. In a recent case, the committee, on a Monday, informed the parties that they should apply to the House for leave to adjourn until eleven o'clock on the following Thursday. They then adjourned until the next day (Tuesday), at eleven o'clock, in case the House did not give them power to adjourn till Thursday. The House gave the committee power to adjourn, and the committee omitted to meet on the Tuesday in order formally to adjourn, thinking that the leave given by the House operated as an adjournment. The following entry was made in the Minutes:— "The House having given the committee power to adjourn, the committee stands adjourned until Thursday." The irregularity was not known to the parties at the time. Some days afterwards the counsel for the sitting member were about to object to any further proceedings on the part of the committee, on account of the flaw in the proceedings, but the point was not discussed, for upon the application of the counsel for the petitioners for further time to procure the attendance of witnesses, the committee refused to grant it, and reported the sitting member duly elected. *St. Alban's Printed Minutes*, 10th April, 1851.

(b) For cases when adjournments are usually allowed. See "Practice."

If the House be sitting at the time to which the select committee is adjourned, then the business of the House is to be stayed, and a motion made for a further adjournment, for any time to be fixed by the House. If the select committee shall have occasion to apply to report to the House, and the House be then adjourned for more than twenty-four hours, the select committee may also adjourn to the day appointed for the meeting of the House. (Sect. 73.)

Committee in what case dissolved.] The committee in case the number of members shall, by death, necessary absence, be unavoidably reduced to *less than three*, and so continue for three sitting days, shall be *dissolved*, and another committee appointed, unless the parties before the committee consent, that *two*, or the *one* remaining member shall continue to act, in which case the member or members so acting shall constitute the committee.

But in case a new committee is to be appointed, the general committee and chairmen's panel are to meet as soon as convenient, at a day and hour appointed by the general committee, notice being given in the Votes and shall appoint a new committee as before provided, and all the proceedings of the former committee will be void (a). (Sect. 78.)

(a) It would appear that in the case of an illegal adjournment, such as that alluded to before, the committee was dissolved by operation of law. Their powers lapsed from their not having been continued in accordance with the statutable authority. If this opinion be correct that the powers of the committee lapsed in consequence of the flaw in their proceedings, it seems quite clear that the House could give no relief. Their control over election committee is strictly defined by the act of Parliament; they could not have appointed a second committee, for that can only be done in the case alluded to in sect. 78.

Committee when not dissolved.] The committee is not dissolved by the death or absence of *one* or *two* members. Should the chairman die or be necessarily absent, a new chairman is chosen by the remaining members from among themselves; the member whose name is first on the list as reported to the House having a casting vote if necessary. (Sect. 77).

Not dissolved by prorogation.] If parliament is prorogued *after* the appointment of a committee, and *before* they have *reported* their determination, the committee is not dissolved, but is *thereby* adjourned to twelve o'clock on the day after that on which Parliament shall meet again for the dispatch of business; and all proceedings of such committee, and of any commission to take evidence issued under the authority of such committee, are to remain in force as if Parliament had not been prorogued, and the committee shall meet and continue to sit until they have reported their determination on the merits of the petition (*a*). (Sect. 88).

Committee attended by Short-hand writer.] Every select committee is to be attended by a short-hand writer specially appointed by the clerk of the House; he is sworn by the chairman faithfully and truly to take down the evidence given before such committee; and from day to day as occasion may require to cause the same to be written in words at length for the use of the committee (*b*). (Sect. 82).

Questions decided in Committee.] All questions before the committee (if for the time being consisting of

(a) *Waterford*, 1 Peck. 231.

(b) For the mode of enforcing the attendance of witnesses, and the power to commit. See *post*.

more than one member) are to be decided by a majority of voices ; whenever the voices are equal the chairman has a casting voice no member is allowed to *refrain* from voting on any division in the committee. (Sect. 86). The committee may order the room to be cleared while they are deliberating if they think it necessary (Sect. 79). The names of the members voting in the affirmative or negative are printed in the Minutes, and reported to the House with the final report. (Sect. 81).

Final decision of Committee.] The committee has to try the merits of the return or election complained of in the petition referred to them ; and they have to determine by a majority of voices (if consisting at the time of more than one member) :

1. Whether the sitting members, or either of them, or any and what other person, were duly returned or elected.
2. Whether the election be void.
3. Whether a new writ ought to issue.

Their determination is final between the parties (Sect. 86).

If the committee come to any other resolution besides the determination before mentioned, they may if they think proper, report the same to the House for their opinion when they report the determination and the House may confirm or disagree with such resolution, and make such orders thereon as they shall think proper. (Sect. 87) (a).

(a) The resolutions mentioned in the 87th section, and which the House may confirm or reject as they think fit are those relating to such matters as the prosecuting witnesses, or appointing commissions of inquiry: 2m

Decision of Committee reported to the House.] The termination of the committee is reported to the House. The report is entered on the Journals, and the House then gives directions for confirming or altering a return, or for ordering a return to be made, or for issuing a new writ for a new election, or for carrying a determination into execution as the case may require.

Petition or opposition reported Frivolous.] The committee may, if they think fit, report that the petition, or the opposition to it, or that the objection taken by particular voters, was frivolous and vexatious, in which case the parties against whom such report is made will be liable in costs. This subject will be more fully considered hereafter in the CHAPTER ON COSTS.

Worborough, 2 P. R. & D. 289. The determination of the committee as to bribery, treating, undue influence, qualification and validity of the election cannot be questioned.

CHAPTER VII.

PRACTICE.

THERE are certain points of practice peculiar to election committees which require to be well understood. Most of the matters of practice which take place prior to the meeting of the select committee have already been observed upon in the preceding Chapters. There is one, however, the delivery of lists of voters intended to be objected to, which must here be noticed. It is only in one class of cases, that is to say, cases of scrutiny, that these lists are necessary (*a*). Formerly there was a difference in the practice as to the delivery of lists in the case of petitions from the several parts of the United Kingdom; the time and place of delivery of the lists were also uncertain. By recent enactments all these doubts and differences have been removed, and one uniform practice introduced. The time and place of the delivery of lists is now fixed by the 55th section of the 11 & 12 Vict. c. 98. It is there enacted, "That the parties complaining of, or defending the election or return, complained of in *any* election petition, shall, except the case hereinbefore provided for (*b*), by themselves

(*a*) *Marlow*, 1 P. R. & D. 14.

(*b*) By sect. 52, where the sitting member declines to defend, and no party has been admitted to defend the election or return, in which case no lists are required.

or their agents, deliver in to the clerk of the general committee *lists* of the voters intended to be objected to, giving in the said lists the several heads of objection, and distinguishing the same *against* the names of the voters excepted to, *not later* than *six* o'clock in the afternoon, on the *sixth day* next before the day appointed for choosing the committee to try the petition complaining of such election or return; and the said clerk shall keep the lists so delivered to him in his office open to the inspection of all parties concerned."

The expression "against the names," in this section, does not mean opposite, or over against each name; but the heads of objection may be stated at the head of a list or class, stating that all the voters in that class are objected to for the reasons assigned in the heading to the list. Where in the petitioner's list of objections the names of the voters objected to were bracketed together, and against the bracket was written, not the heads of objection themselves, but merely a reference to certain heads of objection prefixed as a heading to the class; this was held a sufficient compliance with the enactment that the several heads of objection should be distinguished against the names of the voters excepted to. *Weymouth*, Bar. & Aust. 108 (a).

Such witnesses as may be required to give evidence on the first day of the sitting of the committee, should be summoned by warrants from the Speaker, who is authorized "to issue his warrant for such persons, papers and records as shall be thought necessary by

the several parties on the hearing of the matter of the said petition." (See Form in App.)

It may not be inexpedient here to call the attention of those persons who have the management of election petitions to the importance of having their case thoroughly prepared before the meeting of the committee. It sometimes happens that they trust to the chance of strengthening their case during the hearing of the petition; but it must be remembered that the counsel who opens the case must state all the facts, and enumerate all the parties bribed, and the persons bribing, in his opening speech. Though all the witnesses need not be summoned in the first instance, the petitioners ought to be in possession of what they can prove.

Proceedings before the Committee.] When the committee have all assembled at the time and place appointed, these or similar resolutions are read to the parties by the chairman:—

1. "That counsel will not be allowed to go into matters not referred to in their opening statement, without a special application to the committee for permission to do so."

2. "That if costs be demanded by either party under the 11 & 12 Vict. c. 98, the question must be raised immediately after the decision on that particular case, unless the committee shall otherwise decide."

3. "That the committee expect that with respect to cases of bribery, which it is intended to bring home to the sitting member or his agents, the counsel for the petitioners will now state the names of the

electors bribed, and those of the persons who actually gave the bribes" (a).

4. "The committee, however, reserve to themselves a power under the special application of counsel, to proceed with any case which tends to inculcate any principal or agent, the knowledge of which case has been brought out before the committee in the progress of the investigation, with the circumstances of which the parties could not be reasonably supposed to have been previously cognizant."

5. "That with respect to treating, the committee will expect counsel to state the times and places where such treating is alleged to have taken place (b). The committee, however, reserving to themselves a discretionary power, as in cases of bribery."

6. "That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the agents whose names shall be handed in, without the special leave of the committee."

In addition to these resolutions committees sometimes "direct counsel to confine themselves, with reference to points, as far as possible to the quotation of legal, and not parliamentary decisions" (c).

(a) Where lists of the electors bribed are handed in they need not state time or place. *2nd Harwich*, 1 P. R. & D. 317.

(b) It has been held not to be necessary to specify the times at which the treating took place at the public houses, &c., mentioned in the lists handed in. *Bodmin*, 1 P. R. & D. 135.

(c) *Dartmouth*, 2 P. R. & D. 152.

A short-hand writer is then sworn by the chairman (a).

Who may be heard before the Committee.] It was formerly a matter of frequent discussion whether several petitioners could be heard separately, and whether the returning officer could be heard by counsel when his conduct was complained of (b).

If there are two petitions, one of which alleges bribery, and the other prays a scrutiny only, the petitions could not be tried together; but as the two parts of the inquiry would be quite separate, the right course would be to dispose of the petition for bribery in the first instance. By the 48th section of 11 & 12 Vict. c. 98, it is provided, "that when more than one election petition relating to the same election or return have been referred to the general committee, they shall be bracketed together, and such petitions shall afterwards be dealt with as one petition." This refers to the mode of dealing with the petitions by the general committee. It is not intended that where the object of the petitions is dissimilar they should be dealt with as one by the select committee. It would be hard upon the parties claiming the majority legal votes, that they should be held responsible for costs for a frivolous and vexatious charge of bribery made in another petition by other parties.

It is quite clear that when the statements contained in the two petitions are the same, and the prayer the same, two sets of petitioners will not be allowed to appear separately. *Liskeard*, 2 Peck. 317.

(a) Oath in *App.*

(b) Rogers on Elect. Com. p. 55.

In a recent case two petitions were presented against the return of the sitting members. One by electors alleging bribery and treating, the other by an unsuccessful candidate, also alleging bribery and treating against the sitting members, and praying for a scrutiny. Separate counsel and agents appeared to represent these petitions, but one only was opened before the committee, and the committee came to a decision and unseated the members without hearing the second petition. The second petitioner might then, if he had thought fit, have gone into the allegations not contained in the first petition, but he abandoned his claim to the seat (a).

When several petitions contain distinct allegations against sitting members, they are usually heard separately. *Aylesbury*, 1848. *Printed Minutes*.

When the charges against two sitting members are identical, and they have stood on the same interest and have employed the same agents, much time is often lost by allowing them to appear separately. *Worcester*, 3 Doug. 276. In the *Camelford case* (b), the sitting members, under this state of circumstances were not allowed to appear by separate counsel.

When the sitting members have stood on the same interest, but have had different agents, committees and managers, they have been allowed to appear separately. *Bodmin*, 1848 (c); *Bridgenorth*, 1853 (d); *Barnstaple*, 1855 (e). In the *Bodmin case* (c), one of the sitting members proposed to call witnesses, the

(a) *Maldon*, 2 P. & D. 143.

(b) C. & D. 252.

(c) 1 P. R. & D. 136.

(d) 2 P. R. & D. 20.

(e) 2 P. R. & D. 336.

other did not; the committee refused to come to a decision upon either case until they had heard the whole.

Right of Returning Officer to appear.] The returning officer whose conduct has been complained of in a petition, has often been allowed to appear as a separate party by counsel, before the committee. See *Rogers's Elect. Com.* p. 56. It is there stated in a note, that "the usage of committees to admit returning officers charged in the petition, to a defence by counsel before the committee, grew out of an objection to their being heard as witnesses to explain transactions in which they were charged to have been participants. As there would now be no objection raised to the examination of the returning officer, on the ground that he was a party to the suit (a), it is doubtful whether he will again be allowed to appear separately by counsel.

Petitions read.] When the committee have decided in what order they will proceed, the petitions are read by the clerk.

In the case of petitioners complaining of a *double return*, the "counsel for the person who shall be first named in such double return, or whose return shall be immediately annexed to the writ or precept shall proceed in the first place."

Preliminary Objections.] When the petitions have been read, the counsel for the petitioners proceeds at once to open the case, unless the counsel on the other side has any *preliminary objections* to make against the committee's proceeding further in the case.

(a) 14 & 15 Vict. c. 99, s. 2. Act to Amend the Law of Evidence.

The objection most frequently here taken is as to the right of the petitioners to petition, and their mode of stating such right. As has been already observed, the petitioners ought to shew on the face of their petition that they are such persons as have a right to do so (a); but when the right is not stated with technical accuracy, a committee is seldom disposed to give weight to the objection. *Caermarthenshire*, 1 Peck. 289; *Boston*, 1 Peck. 434; *Drogheda*, K. & O. 200 (b).

The parties defending the seat may shew that the petitioners have not in fact any right to petition, as that they are not voters, or had no right to vote. In a recent case, *Harwich*, 1848, the counsel for the sitting member objected that the petitioner was not an elector for the borough of *Harwich*; that although he was on the register, and had voted, yet he did not reside at *Harwich*, and had no right to vote. The committee resolved, "that the petitioner having claimed to vote, and having actually voted, they were of opinion that they must proceed with the case." *Printed Minutes* (c).

In the *Aylesbury case*, 1848, the counsel for the sitting member was allowed to object, that the petitioner who alleged upon his petition that he had a right to vote, had in truth no such right. If the petitioner whose right to vote is questioned, is upon the

(a) *N. Cheshire*, 1 P. R. & D.; *2nd Sligo*, 1 P. R. & D.

(b) In the *Nottingham case*, C. & D. 197, a committee, after they had sat for five days, allowed a preliminary objection of this nature to prevail. Such a precedent is not likely to be followed at the present time.

(c) 1 P. R. & D. 72.

register, and was not objected to at the last revision, it seems to be quite clear that the committee cannot entertain the objection, unless the disqualification has arisen subsequently to the revision. Notwithstanding the decision in the *Harwich case* cited above, it may be doubted whether a voter, who since the registration prior to the election, *has become* disqualified, has any right to petition, though he did vote at the election.

Where a candidate-petitioner refused to take the qualification oath at the poll, he was not allowed to proceed in his petition. *Penryn*, 1827 (a). It has been doubted whether a person who from his religion cannot take the oaths required, though otherwise qualified, can petition. It is clear that the want of qualification would prevent him from being heard to claim the seat, but as an unqualified candidate, or the candidate whose religious opinions would prevent him from taking the oaths, was still a *candidate* at the election, it may be doubted whether a committee would refuse to hear the petition on that ground. *Taunton case*, 1831 (b).

Objections are sometimes taken to the further proceeding with the petition, on the ground that there are interlineations in it. Where these appear in the petition, the petitioner must explain how and when they were made, or those parts of the petition which are affected by them will have to be abandoned. *Southampton*, P. & K. 214; *Portarlington*, P. & K. 238.

(a) See Chambers's Dict. p. 447.

(b) As to signature to petition; *2nd Harwich*, 1 P. R. & D. 318.

In the *Lyme Regis* case, Bar. & Aust. 456, the petitioner was called upon to shew that the interlineation was made before the petition was signed, or otherwise the allegations interlined would have to be abandoned.

Objection to the Constitution of the Committee.] No objection can be entertained against the legal constitution of the committee, for when they have been sworn at the table of the House, the legality of their appointment cannot be called in question (a).

In a recent case, *2nd Harwich*, 1851, an objection was taken on the part of the sitting member, that the returning officer whose conduct was complained of in the petition, had not received fourteen days' notice as required by the act—and the committee went into evidence on the subject. This it is submitted was clearly incorrect, for the objection, if well founded, affected the legality of the appointment of the committee—which, as we have seen, cannot be questioned after they have been sworn; nor can any objection be taken to the form or substance of the recognizances. Sect. 17 of 11 & 12 Vict. c. 98.

Though the committee have power to entertain any objection to the petition on the ground that it is not an *election* petition, they cannot, it is submitted, entertain an objection that it is not a petition to the House of Commons, or that it has been improperly signed (b). See *St. Alban's*, 1851, *Printed Minutes*, and *Aylesbury*, 1851.

(a) 11 & 12 Vict. c. 99, s. 68.

(b) Supposing the signature to the petition to have been forged, could the committee entertain the objection? If the person whose name was forged appeared to support the peti-

Case Opened.] When any preliminary objections taken have been disposed of, the counsel for the petitioners opens the case—stating the general facts and circumstances. In cases of bribery he either mentions the names of the persons alleged to have been bribed and the parties bribing them, or hands in a list of such names to the committee, giving at the same time a copy to the other side. In the *Derby case*, 1848, the list of persons bribed, handed in by the petitioners, was objected to, because against some of the names there appeared the names of forty-two persons as having given the bribe. It was said this gave no information. It was answered for the petitioner that the bribery took place at the committee room, and they could not tell who paid the money. The committee thought the list ought to be amended—and five names were then given as the parties who gave the bribes (a).

In the *2nd Harwich*, 1851, it was objected that the list was not sufficiently specific, as several names were given as the persons bribing in each case, and the time and place of the bribery were not stated. The committee thought the list satisfied the requirements of the resolution.

It must be borne in mind that the preliminary resolutions usually read to the parties by the chairman do not contain any mention of the exchange of lists of

tion he would seem to sanction the use made of his name. This would be an infraction of the resolutions of the House, *ante*, p. 278, but it seems doubtful whether the select committee could refuse to try the petition referred to them on that ground.

(a) 1 P. R. & D. 100.

persons bribed and of instances of treating. These lists are given in in order to save the time that would otherwise be spent in opening all the cases of corrupt dealings in detail. The practice of handing in such lists has of late become very general, but it is never necessary to do so. The counsel may always, if he thinks fit, open all the cases of bribery, treating and undue influence in detail. A great number of objections were taken to the sufficiency of these lists in the sessions of 1848 and 1853. In addition to the cases already mentioned, it was decided that an act of bribery alleged to have been committed by a person omitted from the list could not be gone into. *Lincoln*, 1 P. R. & D. 77. If the name has been mentioned in the opening speech, but accidentally omitted from the list, it may be added. *Bridgenorth*, 2 P. R. & D. 21. So also in cases of treating, if the place in question has been neither referred to in the opening speech of counsel nor mentioned in the treating list, no evidence can be gone into with regard to it. *Bodmin*, 1 P. R. & D. 134. *Kidderminster*, ib. 265. But where notice had been given to the other side of the name of a house accidentally omitted from the treating list handed in to the committee, the petitioners have been allowed to have such house afterwards inserted. *Aylesbury*, 1 P. R. & D. 86.

Application is frequently made to the committee during the investigation for leave to amend these bribery and treating lists. *Clitheroe*, 2 P. R. & D. 31. *Guildford*, 2 P. R. & D. 107. In the latter case the committee considered that the giving of the names of six or seven persons as the individuals who had given the bribes was not a compliance with their resolution, and they

desired that the lists should be amended. They refused to adjourn for that purpose, but postponed the case with regard to which the statement was to be amended, and directed the counsel to proceed with those cases in which the names of one or two individuals were set forth as the persons bribing.

Where the list of persons alleged to have been bribed contained the names of twenty-five individuals who were the committee of the sitting member, as the persons bribing, the chairman, when this list was objected to as an evasion of the ordinary resolution, stated that the committee were not prepared at present to make any order on the subject. The committee afterwards, when some evidence had been given, resolved "that with reference to acts of bribery alleged to have been committed by persons exceeding five in number, the counsel for the petitioners will be limited to evidence of acts done by the committee in the collective capacity." And when application was on a future day made to amend the lists by substituting for the names of the committee the names of four persons, the committee resolved "that the counsel for the petitioners having been aware from the commencement of the case that objections would be raised to the sufficiency of the lists, are not entitled at this period of the proceedings to amend the list with reference to a particular case." The evidence which had been given in this case was then expunged from the minutes (a).

Where an objection was taken to the sufficiency of the description of a voter in the bribery list, in consequence of there being two persons of the same name

(a) *Peterborough*, 2 P. R. & D. 260.

on the register, the committee directed the agent for the petitioners to identify all voters with regard to whom further information was required by the numbers on the register, before the rising of the committee (a).

It is not necessary that either the time when, or the place where, the alleged acts of bribery were committed should be stated either in the opening speech. *Southampton*, B. & Aust. 379; *Cambridge*, B. & Arn. 171; or specified in the lists; *2nd Harwich*, 1 P. R. & D. 317. As to treating, see *Bodmin*, 1 P. R. & D. 135.

Separating the Case.] It often happens that a petition contains several distinct allegations, some of which would, if proved, render the election void, while the others claim the seat for the unsuccessful candidate. It is usually the practice, in such cases, to keep the different parts of the case quite distinct,—it being left in general to the option of the petitioner's counsel as to which part of the case they will proceed with in the first instance; that part of the case which tends to disqualify the sitting member, or avoid the election, being usually taken first. This division of the case often takes place by arrangement between the counsel on each side. *Wakefield*, Bar. & Aust. 276. But a committee frequently assents to such a division as this, at the proposal of the petitioner's counsel, though objected to by the other side. *Athlone*, Bar. & Arn. 117. Thus, where a petition alleged that the election was void on account of an irregularity in the conduct of the election, *viz.*, the premature closing of the poll, and also contained charges of bribery against the sitting member and his agents, the committee determined

(a) *Liverpool*, 2 P. R. & D. 249.

to decide on the question of irregularity in the first instance, against the application of the counsel for the sitting member that the whole case should be gone into at once, and notwithstanding the charges of bribery had already been opened for the petitioners. *2nd Harwich*, 1851 (a). Where a petition alleges disqualification on the part of the sitting member, and that notice thereof was given at the election, the most convenient course is to prove the disqualification or want of qualification in the first instance. But counsel are usually allowed to proceed with their case as they think best. *2nd Maidstone*, F. & F. 673; *Belfast*, F. & F. 600. *Dublin*, 1 P. R. & D. 204.

In the *Coventry case*, P. & K. 345, the committee after the whole case had been opened, refused to take the question of want of qualification before the charges of riot and intimidation, at the request of the counsel for the sitting member. In the *2nd Barnstaple*, 1855, the petition alleged want of property qualification against one of the sitting members, and corrupt practices against both, the committee, when the whole case had been opened, directed that the allegation relative to insufficiency of qualification on the part of Mr. G. should be first proceeded with. Pr. Mins. p. 2.

Where a petition contained an objection to the member's qualification, and also prayed a scrutiny, the committee declined, at the suggestion of the counsel for the sitting member, to compel the petitioners to commence with the objection to the qualification. *Dublin*, 1 P. R. & D. 193.

Where a petition alleged bribery, treating, riot,

(a) 1 P. R. & D. 319.

intimidation, and prayed a scrutiny, the committee desired the petitioners to proceed, first with the charges of bribery and treating, then with those of intimidation and riot, and, finally, with the scrutiny. Upon the counsel for the petitioners stating that he was not then prepared to proceed with the cases of bribery and treating, the committee decided, that, under the peculiar circumstances of the case (though they did not wish the present decision to be a precedent, considering that if bribery was alleged in the petition it ought to be the first point gone into), they would permit the case of intimidation and riot to be proceeded with first (a).

Occasionally, committees interfere to compel the adoption of a particular course. In the *Lyme Regis*, 1848 (b), the petition charged bribery, and prayed a scrutiny. The petitioner's counsel proposed to proceed in the first instance with the scrutiny: the committee resolved: "That when there is a charge of bribery against the sitting member or his agents, it ought to be gone into first, and not reserved until after a scrutiny;" when the charge of bribery had been disposed of as against the sitting member, the committee refused to proceed with the scrutiny until the bribery had been disposed of on both sides, this however is an exception to the usual practice.

Though the different parts of the case are usually taken separately, each part must be concluded before another is entered upon. For this purpose corrupt practices are usually considered as one portion of the

(a) *Clare*, 2 P. R. & D. 245.

(b) 1 P. R. & D. 26.

case. *Lyme*, 1848 (a). It is usual to keep the cases of bribery distinct from those of treating. Each case of bribery should as far as possible be concluded before another is commenced, and committees usually require some special reason to be assigned for calling additional evidence upon a case which has been quitted (b). Sometimes the several cases of bribery, and also the charges of bribery and treating, are so mixed up together that it is impossible to keep them distinct.

In the 2nd *Sligo* case (c), where there were allegations of bribery, treating, outrage, abduction, and misconduct of returning officer, the committee determined that the cases of bribery should be gone through and completed and decided upon in the first instance, and that they would not call upon the counsel for the petitioners to state what course he would pursue as to the other allegations of the petition. This, however, is not the course usually followed. In general all the cases of treating are heard before any decision is come to upon the charges of bribery, and it may be expected that the same rule will be adopted as to charges of undue influence. The whole of these are now classed together as corrupt practices.

In one case the committee, at the commencement of their proceedings, came to the following resolution on this subject, which is unusual: "Inasmuch as the law applicable to the evidence necessary to establish a charge of treating differs from that applicable to

(a) 1 P. R. & D. 28—30.

(b) *Bridgenorth*, 2 P. R. & D. 20.

(c) 2 P. R. & D. 297.

bribery, the committee are of opinion that the part of the petition which relates to treating shall be proceeded with previous to any evidence being adduced with regard to bribery. They therefore request that counsel will confine themselves in the first instance to the charge of treating." *Cockermouth*, 2 P. R. & D. 165.

Where the charges of bribery had been abandoned on the part of the petitioners by the counsel in his opening statement, the committee refused to allow evidence of an act of bribery to be given when they were subsequently inquiring into a case of treating. *N. Cheshire*, 1 P. R. & D. 219.

Where the allegation in the petition was want of qualification, the counsel for the petitioner proposed that the committee should decide in the first instance on the sufficiency of the qualification, as it appeared on the particular, reserving to himself the right of calling witnesses to disprove the qualification if they should decide against him. The committee decided that the petitioner should proceed and *go through with* his case. *Lincoln*, P. & K. 378 (a).

In one case, where bribery was charged and a scrutiny prayed, the scrutiny was proceeded with in the first instance. The petitioner had by striking off votes obtained a majority, and on his requiring that his majority should then be attacked, it was objected for the sitting member that the petitioner should then proceed upon the charge of bribery, and the committee instructed them to do so. *Galway*, P. & K. 516. This, however, is neither an expedient nor the usual

(a) *Dublin*, 1 P. R. & D. 204.

course of proceeding; in the case here quoted the charge of bribery failed, and the scrutiny was then resumed. In a recent case, in the middle of the scrutiny the counsel for the sitting member applied to the committee to direct the petitioners to proceed with or abandon the charges of bribery against the sitting member or his agents, before the sitting member attacked the votes of the petitioner, but the committee determined to proceed with the scrutiny. 1st *Harwich*, 1851 (a).

The manner of proceeding in cases of scrutiny will be considered hereafter. CHAPTER ON SCRUTINY.

When return amended.] Petitions against the return only are less frequent now than formerly. They usually arise when the returning officer has either accidentally or wilfully added up the votes incorrectly and so returned the wrong candidate, or when he has improperly rejected votes which he ought to have received at the poll. The *Middlesex case*, 2 Peck. 33, and the *Carnarvon case*, P. & K. 106, are instances of improper adding up of the poll. The *Canterbury case*, K. & O. 131; the *Waterford case*, Bar. & Aust. 64; the *Athlone*, Bar. & Aust. 670, are instances of improper rejection of votes. In such cases, when the mistake has been rectified, if the petitioner is thereby placed in a majority on the poll, the return is ordered to be amended by substituting the name of the petitioner for that of the sitting member; but leave is then given to the party so ousted, and to other persons entitled so to do, to question the election within fourteen days. See *Athlone*, Bar. & Aust. 670; *Athlone*, Bar. & Arn. 115.

(a) 1 P. R. & D. 311.

It is only when the return has been thus amended by correcting the errors committed in taking of the poll that time will be given to petition against the amended return. If the first petition had claimed the seat on the ground that persons improperly on the register or disqualified by some legal incapacity had voted for the sitting member, the committee appointed to try such petition would have been bound to go into the whole case of scrutiny if evidence had been offered, and also to hear charges of recrimination against the candidate on whose behalf the seat was claimed. In the cases cited above the seat was claimed on the ground of the erroneous return by the returning officer, and therefore the committee had no jurisdiction to enter upon the general merits of the election. *Carnarvon*, P. & K. 108; *Waterford*, B. & Aust. 649; *Athlone*, ib. 668.

This distinction between a petition against an election and one against the return only is of considerable importance, and was strikingly exemplified in a recent case. *2nd Peterborough*, 1853 (a). In this case the sitting member was petitioned against on the ground of personal disqualification, this having been established by evidence, and notice thereof to the electors having been satisfactorily proved, the committee decided that the petitioner ought to have been returned. Upon that inquiry the unseated candidate did not offer any evidence in recrimination as he might have done, but allowed the return to be amended without bringing any charges of corrupt practices against the petitioning candidate. The return was amended by the Clerk of the Crown in the usual manner on the 15th August,

(a) 2 P. R. & D. 287.

1853 (a). The prorogation of Parliament took place five days afterwards, on the 20th August. On the 31st January, 1854, being the first day of the new session (b) a petition was presented from certain electors of Peterborough praying for leave to question the return of the member who had been seated, and alleging excuses for not having gone into a case of recrimination at the time. When a motion was afterwards made, on the 3rd February, to allow these parties to present a sub-petition the motion was negatived without a division (c).

Witnesses how summoned.] Before the meeting of the committee, witnesses are summoned by the Speaker's warrant; after the meeting of the committee the select committee also have authority (sect. 83 of 11 & 12 Vict. c. 98) to summon witnesses, and send for papers and records. The chairman who signs the summons for the attendance of a witness, can do so only when the committee is sitting; he has no power to do so during an adjournment. *Reading, Bar. & Au.* 424, for the power is given to the *select committee* to send &c. (d).

It appears to have been agreed by the House of Commons in the session of 1842, that a Speaker's warrant had no vitality after the expiration of the session in which it was granted. In that year a Mr. Mabson had been committed to the custody of the Serjeant-at-Arms for disobedience to a Speaker's warrant, directing him to produce certain documents.

(a) 108 Jour. 826.

(b) 109 Journ. 5.

(c) 130 Hansard, 219.

(d) See form of summons in Appendix.

before a committee. The warrant had been issued in the previous session. Upon a motion being made to discharge him out of custody on this ground, it was agreed to without a division (a).

When in Custody.] When the witness whose attendance is required is in custody, application should be made to the House that the Speaker be ordered to issue his warrant for his attendance. See *Ipswich case*, K. & O. 377; *Lichfield*, Bar. & Aust. 373; 2nd *Athlone*, Bar. & Arn. 227; 2nd *Ilchester*, 2 Peck. 251.

If the witness is in the custody of the serjeant-at-arms, the House, upon the application of the chairman of the select committee, will order that the committee may send for the witness whenever they require his testimony. 2 Peck. 136; 1st *Lancaster*, 1848, 103 Journ. 258.

Disobedience to Summons.] It is provided in sect. 83, 11 & 12 Vict. c. 98, "that if any person summoned by such select committee, or by the warrant of the Speaker, shall disobey such summons, the chairman of such committee may, at any time during the course of their proceedings report the same to the House, for the interposition of the authority or censure of the House."

The disobedience to the Speaker's warrants, or chairman's summons, is an offence which the House will deal severely with, unless satisfactorily explained. In the *Southwark case*, Clifford, 91, a witness disobeying the Speaker's warrant was committed to Newgate, and after he had been there three weeks he was

(a) 42 *Hansard*, 1333—1357. *Southampton*, B. & Aust. 408.

reprimanded, and discharged on payment of his fees. *Middlesex*, 2 Peck. 136; *Kirkwall*, 3 Luders, 308.

When a witness parted with the possession of documents after he had been served with the Speaker's warrant to produce all lists, letters, accounts of cash received, &c., and every book, paper, writing, memorandum and document whatsoever, &c., and did not produce the same before the committee, he was ordered into the custody of the Serjeant-at-law. *Southampton*, B. & Aust. 395. See *Bewdley*, 1 P. & D. 64.

Avoiding Service]. The keeping out of the way in order to avoid service of the Speaker's warrants, chairman's summons, is a breach of privilege for which when it is reported to the House, the parties absconding or keeping out of the way will be punished. *Camelford*, C. & D. 252; *Grantham*, 75 Journ. 45; *Penryn*, 82 Journ. 297; see also *St. Alban's*, 1851, *Printed Minutes*. If it is proved before a committee that any persons have assisted in keeping a witness away, or from being served, they will be reported to the House. *St. Alban's*, 1851 (a).

Reports of this kind are made sometimes at the close of the inquiry, but sometimes also before the committee have concluded. *Ipswich*, K. & O. 377; *Grantham case*, 1820; *St. Alban's*, 1851. In this latter case the shorthand writer was ordered to attend the House.

(a) A committee declined to allow evidence to be given into with regard to the tampering with a witness during the inquiry, as being irrelevant to the issue, but said they would take the matter into their own hands and proceed without the intervention of counsel. *2nd Cheltenham*, 1 R. & D. 230.

with so much of the evidence as related to the case of the party reported against. See 115 *Hansard*, p. 119.

How Punished.] The parties so reported against will be ordered into the custody of the Serjeant-at-Arms, and when arrested will be committed to Newgate during the pleasure of the House, or until the end of the session. When the Serjeant-at-Arms has been unable to capture the absconding witnesses, the House has sometimes presented an address to the Crown praying that a reward may be offered for their apprehension. This was done in the *Grantham* and *St. Alban's* cases.

Prevaricating, &c.] "If any witness shall give false evidence, or otherwise misbehave himself before the committee, the chairman, by their direction, may at *any time* during the course of the proceedings report the same to the House; and may, by a warrant under his hand directed to the Serjeant-at-Arms, commit such person (not being a peer of the realm or lord of Parliament) to the custody of the Serjeant without bail or mainprize for any time not exceeding twenty-four hours, if the House be then sitting; and if not, then for a time not exceeding twenty-four hours after the hour to which the House stands adjourned."

Where a witness refused to be sworn, or to make an affirmation according to the 3 & 4 Wm. 4, c. 82, and declined to take any form of oath on the ground that he was a member of the religious sect called Separatists, he was committed to the custody of the Serjeant-at-Arms, and was reported to the House for misbehaving in refusing to give evidence before the committee. The House ordered "That the Serjeant-

at-Arms do bring the said R. E. B. (the witness) from time to time to the select committee appointed to try the petition as often as may be required by the said committee. *Southampton*, 2 P. R. & D. 51. In the *2nd Clitheroe*, 1853 (a), the chairman informed the House that one *Towler* had been guilty of prevarication in giving his evidence before the committee, and that he had placed him in custody. The House made the same order as in the *Southampton case*. The witness after being in Newgate for twelve days petitioned the House for his discharge, expressing contrition for his offence, and complaining that his health was injured by his confinement. This latter assertion having been established by the evidence of a surgeon examined at the bar of the House, the witness was ordered to be discharged from gaol on the payment of his fees (b). In the *Cockermouth case*, 1853, a witness named *Crone* was committed into custody, and reported to the House for having appeared before the committee in a state of intoxication, and for having prevaricated in his evidence and otherwise misbehaved (c). The chairman of the committee afterwards reported to the House that *Crone* had been brought before them in the custody of the Serjeant-at-Arms, and had answered to the satisfaction of the committee all questions put to him. He was thereupon discharged out of custody without payment of fees (d).

When a witness refused to answer a question on the ground that the answer would criminate him, and the committee having decided that he was bound to

(a) 108 Journ. 699.

(b) 108 Journ. 748.

(c) 108 Journ. 389.

(d) 108 Journ. 395.

answer the question, the witness still refused, he was committed to the custody of the Serjeant-at-Arms. *Southampton*, Bar. & Aust. 388 (a).

In the *Lancaster case*, 1848, 103 Journ. 258, a witness was ordered into the custody of the Serjeant-at-Arms for prevarication, and reported to the House. In the *St. Alban's case*, 1851, a witness who prevaricated was also committed. See *Printed Minutes*.

In this last cited case the House was not sitting (it being Saturday) when the witness was committed to custody; on the Monday morning before the chairman had made any report to the House, the witness was sent for, and brought up in the custody of the Serjeant-at-Arms to be examined. It seems very doubtful whether this was a correct proceeding, for though there is no doubt that a witness may be examined while in custody, and will be ordered, as in the *Lancaster case*, 1848, to attend, still under the circumstances here mentioned, the committee had no power to order the attendance of the witness when they had once committed him to custody; they were, when, it is submitted, bound to report his conduct to the House. In a similar case, *Southampton*, Bar. & Aust. 389, the committee refused to send for the witness who had been committed to custody by them.

Witness sworn.] All witnesses are examined on oath. The oath is administered by the clerk of the committee. Sect. 83 of 11 & 12 Vict. c. 98. It was laid down by Lord *Denman*, in the case *R. v. Russell Davies*, for perjury before a committee, that any one swearing a witness by direction of the committee could be a committee clerk for that purpose.

(a) See *Taylor on Evidence*, 1131. See 1 P. R. & D. 4, 10; also 2 P. R. & D. 98, 226.

Expenses may be demanded.] A witness has a right to demand the expenses *necessary to enable* him to come before the committee, before he gives his evidence. *Southampton*, Bar. & Aust. 380; *Lyme Regis*, ib. 460. Any other expenses he must apply for to the Speaker under sect. 94 of 11 & 12 Vict. c. 98 (a).

Witnesses to withdraw.] As has been before observed, one of the preliminary resolutions is, "that no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the agents whose names shall be handed in without the special leave of the committee."

The number of persons who may remain as agents is sometimes limited. In the *Reading case*, Bar. & Aust. 413, a town agent, a country agent and a clerk were allowed on each side. In the *2nd Ipswich case*, Bar. & Aust. 586, in addition to the professional agents, the committee allowed two persons, not being professional persons, to remain on each side in the capacity of agents. This was done on the ground that their *local knowledge* rendered their presence in the room of importance in conducting the case.

It was held in the *Aylesbury case*, 2 Peck. 265, that a member of the House, not being a member of the committee, has no more right to remain than an

(a) Where a witness from the country, who had been subpoenaed there by the defendant, without receiving sufficient to pay his expenses to town, was afterwards subpoenaed in London by the plaintiff and was called by him on the trial, objected to give evidence because he had not been paid enough; the Judge ruled that he must give his evidence, as the plaintiff who called him was not bound to pay his expenses, and that having been examined he must submit to be cross-examined for the defendant. *Emmonds v. Pearson*, 3 C. & P. 113.

other person. In the *Galway*, Peck. 523, a member of the House who remained in the committee room after he had been informed that he would be called as a witness, *was examined*, and see *Southampton case*, Bar. & Aust. 393.

The practice generally adopted during the session of 1853, and to the end of the last Parliament, was to allow sitting members and petitioners to be examined notwithstanding that they had been present in the committee room during the inquiry. *Taristock, Bridgenorth, Chatham, Wigton Burghs, &c.*, 2 P. R. & D.

A person, not a professional man but a partner of the sitting member, was permitted to remain in the room as an agent, though he might be called as a witness. *Lincoln*, 1 P. R. & D. 77. The reporter for a local newspaper and the town clerk were by consent of parties permitted to remain in the room notwithstanding that it was intended to call them as witnesses, and they were examined in the case. *Leicester*, ib. 176.

The names of two non-professional men were not allowed to be retained on the list of agents of the petitioner, but were allowed to remain in the room, no objection to be taken by either side if they were called. *Huddersfield*, ib. 276. The same committee ordered every one served with a warrant to leave the room.

It has been stated that an exception to the general rule of being obliged to withdraw, has been made in favour of barristers. *Southwark*, 2 Peck. 167. But it seems very doubtful whether any such privilege exists except for those barristers who are engaged as

counsel in the case; if any others are present in the committee room, they come in as part of the public.

The rule is in general strictly observed. *Carlton* F. & F. 62; *Sudbury*, Bar. & Aust. 444. Where a witness, after notice has been given to him to withdraw, came into the room to avoid being examined, the committee ordered him to be examined. *Oxford* P. & K. 104. In the 1st *Southwark* case, Clifforde 108, a witness had been in the room for four days before he was summoned; after that he had absented himself from the room. The committee, after deliberation, determined that the witness, under the peculiar circumstances of the case might be examined. See 2nd *Horsham*, 1 P. R. & D. 253.

In the 2nd *Cheltenham*, 1848, ib. 228, a witness was called in consequence of something said by the preceding witness; till then the petitioners had not intended to call him. He had been in the room during the examination of the preceding witness. The committee said they were reluctant to exclude evidence, but it was better to adhere to the rule. See also *Great Marlow*, Bar. & Aust. 98.

In cases of scrutiny, where assessors and collectors are frequently called, they have been allowed to remain in the room the whole day by the consent of parties. *Middlesex*, 2 Peck. 135; see also *Reading*, Bar. & Aust. 413, where a witness attending in an official capacity to prove the poll was allowed to remain in the room. *Aylesbury*, 1 P. R. & D. 86. A witness called to prove handwriting (a).

(a) A witness who had remained in the room after his examination was not permitted to be recalled to prove handwriting. *Kidderminster*, 1 P. R. & D. 265.

Witnesses are ordered to withdraw when the petition has been read; they ought not to hear the opening speech any more than the evidence. See *2nd Horsham*, 1 P. R. & D. 253.

If a witness remains in court at *Nisi Prius* in contravention of an order to withdraw, he renders himself liable to fine and imprisonment for the contempt; and until lately it was considered that the Judge, in the exercise of his discretion, might even exclude his testimony. But it seems to be now settled that the Judge has *no right to reject the witness* on this ground, however much his wilful disobedience of the order may lessen the value of his evidence. 2 Taylor on Evid. 1088; *Cook v. Nethercote*, 6 C. & P. 743; *Thomas v. David*, 7 C. & P. 350; *R. v. Colley*, 1 Moo. & M. 329; *Cobbett v. Hudson*, 1 E. & B. 14, S. C. 22 L. J. Q. B. 13; see also *Doe d. Good v. Cox*, 1 Clifford's Southwark case, 114, 6 C. & P. 743.

Course of Proof.] In all cases the first thing to be proved is that there was an election; *Reading*, Bar. & Aust. 414, and cases there cited; and this is proved by the production of the poll-books, together with the writ and return. In English and Irish cases these are produced by a clerk from the office of the clerk of the Crown. In Scotch cases the mode of proof is different: this will be considered in the Chapter on EVIDENCE.

A witness called to produce the poll cannot be cross-examined then as to other matters. *Ipswich*, 1 K. & O. 339; *Weymouth*, Bar. & Aust. 106; *Waterford*, 1 P. R. & D. 85 (a).

(a) See cases cited, *Coventry*, P. & K. 352.

The next step taken in general is to call upon the petitioners to prove their right to petition. The poll book will prove that a person of the same name was the candidate or the voter. Evidence may then be given to identify them. *Chester county*, 1848 (a). The petitioner may now be called to shew that he is the voter. The evidence is then proceeded with according to the nature of the inquiry.

Course of Proceeding.] When the evidence on behalf of the petitioners is concluded, as to that part of the case which is at the time before the committee the junior counsel sums up (b).

The counsel for the sitting member then opens his case; if he calls no witnesses the petitioner cannot reply. If he calls witnesses, the evidence is summed up and the petitioner replies, and the committee then decide on that part of the case which is before them. See *Bodmin*, 1 P. R. & D. 135; *2nd Horsham*, ib. 25.

If the seat is claimed in the petition, the sitting member may then proceed to disqualify the petitioner or person on whose behalf the seat is claimed. It is always better to dispose of this part of the case before entering on the scrutiny, for much time and labour will be lost, and great expense unnecessarily incurred if it should appear that the party for whom the seat

(a) 1 P. R. & D. 215; *2nd Sligo*, 1 P. R. & D. 210.

(b) Committees sometimes refuse to hear more than one counsel upon a point of law which arises incidentally in case, *2nd Sligo*, 1 P. R. & D. 210; *Cochermouth*, 2 P. R. & D. 165; *2nd Lancaster*, 1 P. R. & D. 151. In the *Athlon case*, 1853, Mins. p. 10, the committee refused to come to any such resolution. It cannot be laid down that there is any fixed rule upon the subject.

is claimed is, after he has been decided to have the majority of legal votes, disqualified from sitting.

Recrimination.] Whenever the petition claims the seat, whether the petitioner be the *candidate* or an *elector*, and although the *claim of the seat* is abandoned on the hearing of the petition, the sitting member has a right to recriminate; that is to say, to shew that the person for whom the seat is claimed has no right to sit. *Kirkcudbright*, 1 Lud. 72; *Great Yarmouth*, F. & F. 665. It makes no difference whether the petition is from the candidate or electors. *Ennis*, K. & O. 434. A different opinion was said to have been expressed in the *Galway case*, P. & K. 518, *in notis*; but the rule, as here laid down, has been constantly acted upon. *Middlesex*, 1 Peck. 294, see note to 2nd *Montgomery*, P. & K. 464.

When on the hearing of the petition the claim to the seat is abandoned, the sitting member will not by such abandonment be deprived of the right of giving recriminatory evidence. *Coventry*, 1 Peck. 99; *New Windsor*, 2 Peck. 188. Although, where the petition does not claim the seat, no evidence of a recriminatory character can be given, still, in order to *discredit* the witnesses for the petitioner, they may be asked as to acts of treating and bribery in which they have been themselves implicated. *Southwark*, Cliff. 117; *Hertford*, P. & K. 554; *Great Yarmouth*, 1848, Minutes, p. 7 (a).

In cases where the sitting member is permitted to recriminate, he is not confined to retorting the charges alleged against himself, but may bring forward any

(a) 1st *Lancaster*, 1 P. R. & D. 43; see also *Southampton*, 2 P. R. & D. 50; *Tynemouth*, ib. 135; *Maldon*, ib. 145.

circumstances which will shew that the person for whom the seat is claimed is disqualified from sitting. *Dover*, P. & K. 422, *in notis*; *Middlesex*, 1 Peck. 188; *Introd.* xxi; *New Windsor*, 2 Peck. 188.

The reason why recriminatory evidence may be adduced against the petitioner is this, that if he be declared duly elected, it is then too late to present a petition against him. See *Great Yarmouth*, F. & K. 665, observations on *Dublin case*; *2nd Peterborough*, 2 P. R. & D. 295 (a).

Adjournment.] The committee have power to adjourn for twenty-four hours, but for no longer period unless they have first obtained the leave of the House. They are required to sit from day to day, 11 & 12 Vict. c. 98, s. 73. Special applications are frequently made to committees to adjourn. Thus, on the ground of the absence of a material witness who had been served with a Speaker's warrant but who was abroad when the committee met, an adjournment of ten days was applied for and granted by the House. *Southampton*, 2 P. R. & D. 47; *East Grinstead*, 1 Peck. 339. An adjournment was granted because the mayor was too unwell to attend the committee with the poll. *New Sarum*, P. & K. 243. Where the parties have themselves been guilty of default an adjournment is usually refused. An application for an adjournment to admit of the petitioner producing the town clerk to prove the poll was refused in the *2nd Montgomery*, P. & K. 469. There are a great number of conflicting decisions on this subject collected in *Chambers's Dict. of Elect. Law*, p. 127; *2nd Sligo*, 1 P. R. & D. 210.

(a) *Ante*, p. 339.

In a case where summonses had been forwarded in time, according to the usual course of post, to secure the attendance of the witnesses at the meeting of the committee, but the money for their travelling expenses was not transmitted until afterwards, the committee refused an application for an adjournment till the witnesses should arrive. *2nd Athlone*, Bar. & Arn. 226. Unless due diligence has been taken to secure the attendance of the witnesses, the committee usually refuse to grant an adjournment. *Lincoln*, P. & K. 378. In the *St. Alban's case*, 1851, several adjournments were granted by the committee, in order to enable the petitioners to procure the attendance of their witnesses. There were, however, some very special circumstances in that case; several of the witnesses, after they had been served with the warrants to attend, absconded, and others were proved before the committee to have been kept out of the way to avoid service (a).

Sometimes where an unexpected decision of the committee has taken the parties by surprise, an adjournment is allowed. In the *Lyme Regis*, 1848, the petitioner proposed to go on with the scrutiny in the first instance; the committee having decided that they would proceed with the charges of bribery, the petitioner's counsel applied for an adjournment to enable him to procure the attendance of the witnesses necessary for this part of the case; the committee agreed to adjourn for twenty-four hours, and the chairman stated that after that time it was possible the committee

(a) The informality in the mode of adjourning the committee in this case has been adverted to, *ante*, p. 315, "Committees."

would adjourn for twenty-four hours further, to enable the petitioners to bring up their witnesses. 1 P. R. & D. 27.

An adjournment was allowed until the next day, that it might be seen what effect a particular decision had on the petitioner's case. *Southampton*, P. & K. 237; *Carlow County*, P. & K. 399; see cases cited *Portarlington*, P. & K. 240.

An application to adjourn for one day on the ground that the witnesses had only just arrived in London and had not been examined in consequence of the miscarriage of the letters sent to require their attendance, was refused. *1st Lancaster*, 1 P. R. & D. 4. Absence of counsel is no reason for an adjournment. *Sligo*, 1856, 2 P. R. & D. 345. Where the case is under scrutiny, which had been pursued for many days, was abandoned in consequence of the decision of the committee upon a class of cases, the committee agreed to obtain leave from the House for an adjournment, in order to enable the petitioners to obtain witnesses from Ireland to proceed with a fresh branch of the case, viz., the want of qualification in the sitting member. *Dublin*, 1 P. R. & D. 204; see also adjournment on the ground of surprise, *2nd Sligo*, 2 P. R. & D. 298.

In cases of scrutiny, an adjournment is often granted to enable the agents on either side to confer together and see what cases they can agree to abandon as untenable. By this mode of proceeding considerable expense is saved to the parties. See *2nd Lancaster*, 1 P. R. & D. 153.

When once a point has been decided, committees in general refuse to allow the case to be re-opened. *Dundalk*, 1 P. R. & D. 96.

Applications for Costs.] A resolution similar to the one given above (a), is usually passed at the commencement of the proceedings, with regard to costs; viz., that the question of costs must be raised immediately after the decision on the particular case, unless the committee decide otherwise; sometimes for convenience, the question of costs is postponed. The subject of costs will be considered hereafter.

Abandonment of Defence.] When the sitting member, or those defending the seat on his behalf, withdraw from the contest, the petitioner, if he claim the seat, must then prove his majority. *Waterford*, 1 Peck. 239. In a note to this case it is observed, that in the *2nd Seaford case*, 1786, 3 Lud. 138, the sitting members having declined to defend their seats, the committee resolved, that the petitioners were duly elected without hearing any evidence on their part. The *Dumbartonshire* is there cited as adopting the same practice; but it appears, however, that in that case, 3 Lud. 139, an agent of the sitting member attended, and said, he was instructed to admit the majority to be for the petitioner.

In the *Longford County case*, P. & K. 201, and in the *Mallow*, P. & K. 268, when the sitting member had withdrawn, the petitioner proved his majority. See also *Oxford*, P. & K. 69.

A question arose, in the *Carlisle case*, 1848, as to what proof should be given that the sitting member no longer defended his seat. The counsel for the petitioners stated, that the agents of Mr. *Dixon* had written a letter stating that Mr. *D.* did not mean to

(a) *Ante*, p. 322.

defend his seat as he was a partner in a Government contract; the committee said, they would not feel justified to allow this to pass, as a matter of fact without investigation; evidence was then given on the subject of the contract. In this case the seat was not claimed; the election, therefore, was void.

Report of Committee.] The final determination of the committee is reported by the chairman to the House. It has also been the practice in modern cases to report specially on the number of persons bribed and the amounts given; also any other circumstance that they think ought to be notified to the House. 103 *Journal*, 1848, *Reports* of that session; also cases in Bar. & Aust. and Bar. & Arn. Reports (a).

Sometimes the committee find it necessary to make a special report to the House during the progress of the proceedings, when they are unable to procure the attendance of witnesses, and when witnesses have misbehaved in giving evidence.

Commissions to Ireland.] Commissions to Ireland to examine witnesses under the 42 Geo. 3, c. 11 have never been frequent. Of late they have been seldom applied for. It was stated by Mr. Harris in the *Dublin case*, F. & F. 110, that from the date of the act until the year 1835, a period of thirty-two years, only four commissions had been granted; that in 1833, there were fourteen Irish petitions, and eleven in 1831, but that no commission was issued either of those years. In the session of 1835, two commissions were granted in the *Dublin and Wexford cases*, F. & F.

(a) 11 & 12 Vict. c. 98, s. 87. See 2nd *Peterborough* 2 P. R. & D. 291.

Considering the facility and expedition with which witnesses can now be brought from the most distant parts of Ireland to London, it may well be doubted whether any applications will be made in future for commissions, and whether they would be granted if they were made.

It is quite discretionary with the committee whether they will grant or withhold the commission.

The cases on this subject are *Waterford*, 1 Peck. 218; *Drogheda*, C. & D. 111; *Cork*, K. & O. 288; *Dublin*, F. & F. 110; *Westmeath*, F. & F. 615.

CHAPTER VIII.

PETITIONS ON THE GROUND OF IRREGULARITY AT
THE ELECTION.

1. *Want of title in the Returning Officer.*
2. *Irregularities at the Nomination.*
3. *Denial of Poll, when demanded.*
4. *Improper appointment of Poll Clerks and Deputies.*
5. *Impediments in taking the Poll.*
6. *Insufficient Notice of holding the Election.*
7. *Poll not kept open according to law.*
8. *Illegal adjournment of Poll.*
9. *Punishment of misconduct in Returning Officers.*

PETITIONS are sometimes presented complaining of some irregularity in the manner of holding the election: it is therefore important to consider what effect any irregularity, or departure from statutory directions as to forms, may have upon the validity of an election (a).

1. *Want of title in the Returning Officer.*] The want of title has in many cases been held to be

(a) The greater part of the contents of this Chapter has been already alluded to incidentally in the 2nd Chapter under the head of Proceedings at the Election.

ground for impeaching the validity of an election or return. A great number of cases on this point are to be found in the Journals.

Winchelsea, 24th May, 1624. A return by a mayor, who was an intruder into the office, was reported to be good. *Olithero*, 2nd Feb. 1693. Where the returning officer was not of age, the sitting member was, nevertheless, declared to be duly elected. In another case, where the petition alleged that there was a radical defect in the election of the mayor who had acted as returning officer, and returned the member, the committee held the election valid, and declared the petition to be frivolous and vexatious. 2 *Fraz.* 356. In a case where the lawful returning officer refused to take the poll properly, and the poll was then taken by others, and the return made by them, the election was held good. *Cricklade*, April, 1689. See 1 *Doug.* 419. In a work of great authority on the subject of Elections, it is said, "Elections made under an usurping presiding officer, where there has been the form of an election, have been uniformly supported." *Heywood Boroughs*, 61. See also 1 *Roe on Elections*, 443, and *R. v. Davie*, 2 *Doug. K. B.* 568.

In a recent case, *Wakefield*, *Bar. & Aust.* 295, this matter was much considered, and very fully argued. In that case Mr. H. had been returned for the borough of W.; the committee decided that he was at the time of the election the returning officer *de jure*, and therefore ineligible. The petitioners then proceeded to claim the seat for the other candidate at the election, on the ground of the disqualification of Mr. H., when it was objected that the election must be considered altogether void, because Mr. B., who had acted as

returning officer, and who had made the return, could not have had no authority; and it was urged that by the statute 7 & 8 Wm. 3, c. 25, "the precept is to be delivered to the proper officer of every such borough, &c. to whom the execution of such precept doth belong, or appertain, and to *no other person whatsoever*;" and also, that the legally constituted returning officer alone could administer the bribery oath required by 2 Geo. 2, c. 24, and the oath under the 81st section of 6 Vict. c. 18. The committee declined to declare the election void on the ground stated by the counsel for the sitting member; and they decided that the petitioner was duly elected.

2. *Irregularity at Nomination.*] A popular impression exists, that the returning officer ought, when there are more candidates than are required to supply the vacancies, to take a *show of hands*, and that the omission to do so is an irregularity.

The modern practice is, no doubt, in the first place to take a show of hands, but formerly there were several rude modes of expressing the opinion of the electors, which constituted an election by the voice, either holding up of hands, calling out the names of the candidates, or by dividing into separate bodies. 1 Whitl. 393. In *Com. Dig. Parliament*, (c. 11), "it may be judged who are elected by hearing of the voice, or view of the hands held up." When however, a poll was demanded, these forms were unnecessary.

In *Faulkner v. Elger*, 4 B. & C. 455, Bayley, J. says, "The common law mode of election is by show of hands, or by poll, and the party electing is the one said to have a voice in the election."

In *Anthony v. Seger*, 1 Hag. Ca. Cons. Court, 13, Sir William Scott said, "When a poll is demanded, the election commences with it, as being the regular mode of popular elections, the show of hands being only a rude and imperfect declaration of the sentiments of the electors. It often happens that on a show of hands the person has a majority, who on a poll is lost in a minority; and if parties could afterwards recur to the show of hands, there would be no certainty or regularity in elections. I am of opinion, therefore, that when a poll is demanded, it is *an abandonment of what has been done before*, and that everything anterior *is not of the substance* of the election, nor to be so received."

"If there be any irregularity in the mode of demanding the poll, the taking of the poll would be a complete waiver of such irregularity." Per Tindal, C.J., *Campbell v. Maund*, 5 Ad. & Ell. 88.

It is obvious, that if only the requisite number of candidates to fill the vacancies are put in nomination, they ought at once to be returned. In the *Nottingham case*, 1 Peck. 77, the committee resolved, "that John Allen, being the returning officer, acted contrary to his duty in opening a poll, and proceeding to take votes for about half an hour, and until forty electors had polled; there being, during that time, no third candidate."

When there is to be no selection of candidates, it would seem to be unnecessary that the electors should express any opinion with regard to the merits of those put in nomination, either by holding up of hands, or otherwise. It is not a little singular, that in the Scotch Reform Act, 2 & 3 Wm. 4, c. 65, it is provided

by sections 29 and 30, that where there are no more candidates proposed than there are vacancies to be filled, the persons put in nomination are to be declared duly elected *on a show of hands*; but if there are more candidates, then a poll is to be demanded. It would appear from this, that if the show of hands was against the candidate who had no competitor, no election could be made. The forms of popular elections were unknown in Scotland prior to the Reform Act, hence the peculiarity of the above enactment.

3. *Poll denied.*] Whenever there are more candidates at an election than there are vacancies to be supplied, and a poll is demanded, the returning officer is bound to take a poll. 1 Journ. 181. Sir E. C. said in the House, "He liked not the sheriff's answer that he needed not grant the poll, for he was bound to grant it." If the returning officer refuse or neglect to grant the poll, the election is void, and he may be punished for a misdemeanor. *Southwark*, Glan. 7, see 4 Instit. p. 48 (a).

4. *Improper appointment of Poll-clerks and Deputies.*] Sheriffs, and other returning officers, have power to appoint poll-clerks to take the poll at the several polling places. 2 & 3 Wm. 4, c. 45, ss. 65 and 68 (to England); 2 & 3 Wm. 4, c. 65, ss. 27 and 28 (Scotland); 2 & 3 Wm. 4, c. 88, s. 51 (Ireland). The 25 Geo. 3, c. 84, requires that the returning officer shall swear the poll clerks truly and indifferently.

(a) *Frome*, 2 P. R. & D. 58.

(b) And 13 & 14 Vict. c. 68, s. 4.

take the poll, &c. In a case where it appeared that the returning officer had omitted to swear the poll clerks, it was held that this was contrary to law, *but*, that it did *not avoid the election*, as the 25 Geo. 3, c. 84, was a directory statute. *Colchester*, 1 Peck. 506.

A question was raised in one case, whether the appointment of minors to act as deputies for the returning officer would render the election void. It appeared that out of the seven deputies appointed to take the poll in the several booths, four of them were persons under age; the petition contained several allegations with regard to the impediments and obstructions, thrown in the way of taking the poll at the election. The counsel for the sitting members informed the committee, that not being prepared to deny the fact of the minority of several of the deputies, and having ascertained that impediments by which the taking of the poll was obstructed, and a part of the constituency prevented from giving their votes, had occurred nearly as they were described in the petition, he was obliged to admit that under these circumstances, the election could not be upheld, and that it must on these grounds be declared void. The committee then resolved that the election was void; but did not specify on which of the allegations in the petition they had come to that conclusion. *Belfast*, Bar. & Aust. 555. In a note, however, by the learned reporters, it is stated, that "they had reason to know that the resolution of the committee was solely founded on an allegation respecting the insufficiency of the booths."

If the election had been properly conducted in other respects, it may well be doubted whether a committee

would hold an election void on account of the minor of any of the officials engaged in it. See as to minor of the returning officer. *Clithero*, 1693.

5. *Impediments in taking the Poll.*] Where statutory provisions as to the administering the bribe oath, and the oaths of qualification had been improperly made use of, for the purpose of occasion obstruction and delay in the taking of the poll, the committee avoided the election on that ground. *Carlow County*, 1835, not reported. See 90 Jour. 153, 291, and cited Bar. & Aust. 562. This ground of objection to the election was one of those taken in the *Belfast case*, Bar. & Aust. 553; but it does not appear very clearly whether this was the ground on which the committee in that case declared the election void.

By the 51st sect. of the Irish Reform Act (a), returning officers were required to provide such number of polling places, and to make such a division of the voters according to the first letter of their names, that it shall not be necessary for more than 600 voters to poll in any one place of polling, *but so as not to divide* the names beginning with the same letter of the alphabet (b); at an election in Ireland, there were 892 voters whose name began with the letter M., to whom only one booth had been provided, which booth was of the same dimensions as, and not more convenient than, the other booths which comprised the names of about 530 voters each. It was alleged

(a) 2 & 3 Wm. 4, c. 88.

(b) See 9 & 10 Vict. c. 19, and 13 & 14 Vict. c. 6. Provisions for more easily taking the poll in Ireland.

among other matters of complaint in the petition, that this booth for the letter M. was so insufficient that a number of voters were prevented thereby from polling: the election was declared to be void, and as it would appear by the note of the reporters for this reason. *Belfast, Bar. & Aust. 553.*

6. *Insufficient notice of holding Election.*] The rule on this subject appears now to be fixed, though some of the older decisions laid down a different principle; that where any of the statutory regulations for the holding of elections have not been complied with, an election will not on that account be held void, unless the result of the election can be shewn to have been affected by their non-observance. *Orme on Elections*, p. 16. In the *Seaford case*, 3 Luders, 3, where the returning officer had proceeded to the election without having given four days' notice of it, as required by 7 & 8 Wm. 3, c. 25, the committee determined the election to be void. And also in the *Totness case*, 1840, cited from the short-hand writer's notes in the *Athlone case*, Bar. & Arn. 130, where the notice of holding the election was given on the 19th July, and the election was held on the 23rd, so that there were only three clear days intervening, an objection having been taken in the petition to the validity of the election on that ground. The committee resolved, "That the expression in the 7 & 8 Wm. 3, c. 25, four days' notice at the least, must be understood as requiring four clear days, and that therefore the election was void." These are the cases which are the exceptions to the principle above laid down. It does not appear that there was much argument on the subject in the *Totness case*.

On the other hand, in the *Colchester case*, 1 Pe 507, which was subsequent to the *Seaford case*, the committee resolved that they did not consider the omission of any form prescribed by a directory act sufficient to make the election void. In the *Orkney case*, 1 Fraz. 369, the committee decided, that an election was valid, though the statutory notices had not been given. As illustrating the principle here contended for, may be cited a decision, that an election is not void, though the returning officer has omitted to read the Bribery Act as required by statute. 2 Do 452.

This question of legal notice was very fully discussed in a recent case. *Athlone*, Bar. & Arn. 119. It appeared that the notice of holding the election had been given on the 2nd of July, and the election was held on the 6th July. It was not disputed that the proper notice had not been given, the committee resolved, "That the notice of the day appointed for holding the election for the borough of *Athlone*, not having been given in conformity with the provisions of the statute 1 Geo. c. 11, the conduct of the sheriff, or his officers, appears in that respect to have been irregular; but the committee have no reason to believe that the result of the election was affected by such irregularity" (a).

(a) The 3 & 4 Vict. c. 81, which appointed *three clear days notice at the least* of elections in cities, &c., did not extend to Ireland. The 9 & 10 Vict. c. 30, has now established the same notice of elections in Ireland as in England. "In all cities, towns, and boroughs, and cities or towns or counties in Ireland, the returning officer is to proceed to the election within eight days after the receipt of the writ or precept, giving *three clear days' notice at the least* of the day appointed for the election, exclusive of both the day of proclamation and the day appointed for the election.

In the *Rye case*, 1848, notice was given on the 20th December, 1847, and the day of the election was the 23rd December; the sitting member was the only candidate. A petition was presented by electors, complaining of this irregularity. When the case had been opened, the counsel for the sitting member at once abandoned the defence of the seat. There can be no doubt that this was a mistake. 1 P. R. & D. 112.

It has before been pointed out that the notice required to be given under the hand of the Mayor, &c. need not be in his handwriting, but may be printed. 2nd *Sligo*, 1 P. R. & D. 211. *Ante*, p. 13.

It may be useful here to quote the language of Parke, B., in the case of *Gwynne v. Burnell* (a). "It is by no means any impediment to construing a clause to be directory, that if it is so construed there is no remedy for noncompliance with the direction. Thus the statutes which direct quarter sessions to be held at certain times in the year are construed to be directory (b), and the sessions held at other times are not void; and yet it would be difficult to say that there would be any remedy against the justices for appointing them on other than the times prescribed by the statutes; from the nature of the enactment the Courts have rightly concluded that though the Legislature intended the precise periods to be fixed, they did not intend the consequence of a deviation to be that the appointment should be void."

7. *Poll not kept open according to Law.*] It would seem that the same principle with regard to the

(a) 2 B. N. C. 39.

(b) *R. v. Justices of Leicester*, 7 B. & C. 6.

deviating from statutory directions, ought to apply in cases where the poll has been prematurely or improperly closed, as in the cases already referred to, and that the election ought not to be vitiated, unless the result of it has been affected by the irregularity. The decisions on this subject have not been uniform.

In the *Limerick* case, P. & K. 355, the committee determined "that the proceedings of the Sheriffs of the county of the city of *Limerick*, in opening and closing the poll at hours other than those prescribed by the 2 & 3 Wm. 4, c. 88, and 1 Geo. 4, c. 11, were highly improper; but the committee have reason to believe that their conduct did not arise from any corrupt motive, and further that the result of the election was not affected by such proceedings." *Vide Roxburg* F. & F. 503.

In a recent case, however, *2nd Harwich*, Printed Minutes, a committee came to a contrary decision. In that case the committee upon most conflicting evidence came to the conclusion, "that the poll had been closed before *four o'clock*; that the proceedings had been interrupted and obstructed by violence, that in consequence of such interruption and obstruction by open violence, J. W., an elector, who had tendered his vote, had been prevented from recording the same; that the returning officer should not have finally closed the poll, and that the election was void." It is impossible not to observe that this was an extreme case (a)

(a) The frequency of petitions from the borough of *Harwich* may, in some degree, explain the course adopted in this case. This was the second petition in 1851, and contained charges of bribery, which were not gone into. This supposition is fortified by the circumstance that the writ for a new

The poll could not have been closed more than *three* or *four* minutes before four o'clock; all the violence and obstruction referred to in the decision of the committee occurred at that period, and were caused by the fishermen of the town pulling down the hustings in accordance with an old custom, and carrying away the materials, at a time when they considered the election was over. It was not pretended that the result of the election was affected by it.

It may not be unimportant here to consider whether the rule laid down in this case, is consonant with legal principles. In the first place it must be observed, that there is no direct enactment that the poll *shall* remain open until four o'clock. By the 62nd section of the 2 Wm. 4, c. 45, as to counties, and by the 67th section, as to boroughs, it was provided that the poll was to continue for *two* days; for seven hours on the first day of polling, and for eight hours on the second, the poll not to be kept open *later than* four o'clock on such second day. The 5 & 6 Wm. 4, c. 36, s. 2, confines the time for polling in cities, &c., to one day; and provides "that the polling shall commence at eight, and that *no poll shall be kept open later than four of the clock in the afternoon.*" Though the act expressly prohibits the continuance of the polling, beyond a certain hour, there is no positive direction that it *shall* remain open *until* that hour. By the 70th section of the Reform Act, it is provided, "That nothing in this act contained, shall prevent any sheriff, or other returning

election was suspended for more than twelve months, although the election had been avoided on account of the premature closing of the poll. *Ante*, p. 45.

officer, from closing the poll previous to the expiration of the time fixed by this act, *in any case where the poll might have been lawfully closed before the passing of this act.*" Now it seems to be clear that a returning officer was allowed, prior to the Reform Act, a discretion as to the time during which he should keep open the poll; and that in certain cases he might lawfully close the poll before the expiration of the time fixed by law. It is clear that he could have closed the poll without the consent of the candidates, or persons representing them at the election. It is said to have been admitted on both sides in the *Rochester case*, 2 Roe, 452, that the poll should, in every instance, be kept open until it is fairly to be presumed that all electors, at least such as intend to poll, have polled. See Corb. & D. Chamb. Dict. 473; Hey. Count. 388. In the *Rochester case*, the committee decided that the poll had been improperly closed, and that the election was void. If the poll was closed on the seventh day, there being, at that time, a majority of *two only*, the candidate, in a minority, protesting that he had, at the time, a sufficient number of votes to turn the balance in his favour. In the *Bristol case*, C. & D. 80, the poll was closed on the fifth day, there being, at the time, a majority of 10. The friends of the unsuccessful candidate protested against the closing of the poll, alleging that there were more than 500 voters unpollled. The committee, after hearing the case fully argued, resolved that the sitting member was duly elected. The returning officer was therefore, before the Reform Act, though he was prohibited from continuing the poll beyond three o'clock on the *fifteenth* day, might have legally closed it in certain cases before that time, and the test of the

priety of so closing it seems to have been, Was the result of the election affected by it? The 70th section of the Reform Act gives a similar power to the returning officer since the passing of that act; and cases may be supposed, where the returning officer would act discreetly in finally closing the poll before four o'clock. If all the constituency had been polled out, or if only a few voters remain unpolled, and the majority was so decided that the balance could not be altered by the votes of such unpolled electors, and a riotous disposition began to manifest itself, so that the returning officer was apprehensive that the poll books might be destroyed, would he not, in such cases, be justified in closing the poll before the legal limit? It may be said he has power to adjourn, but then the poll must be kept open the whole of another day, and the result of the election would remain the same. If this question should again be raised and fully discussed, it is most probable that a committee will come to the same conclusion as that in the *Limerick case*, that, unless the election is affected by the premature closing of the poll the election will not be held void.

[8. *Illegal Adjournment of Poll.*] The decisions which have taken place on the subject of the illegal adjournment of the poll, throw some light upon the question already considered of the premature closing of the poll, and seem to add weight to the views there expressed. In the *Colchester case*, 1 Peck. 506, the committee among other matters resolved, "That the adjournment of the poll on the second day of election, no sufficient cause appearing to make such adjournment necessary at the time, and in the circumstances

attending thereon, was highly improper and contrary to law: that, on the third day of the poll and adjournment took place which was also highly improper and contrary to law; *that at the same time* they not consider the omission of any form prescribed by the directory act, 25 Geo. 3, c. 84, as sufficient to make the election void."

An express authority to adjourn the poll in case of riot, is now given to the returning officers in England by 2 & 3 Wm. 4, c. 45, s. 70, and 5 & 6 Wm. 4, c. 36, s. 8; in Scotland, by 2 & 3 Wm. 4, c. 65, s. 4; in Ireland, by 13 & 14 Vict. c. 68, s. 18 (a).

In the *Roxburgh case*, F. & F. 475, the poll had been adjourned for two hours on account of the riot and disturbances that had taken place at some of the polling places, but the notification of adjournment required by the Scotch Reform Act not having been properly given the polling was resumed on the same day. The committee held that this illegal adjournment did not invalidate the election. In Mr. Rogers' valuable work on Elections, p. 34, it is observed: "An illegal adjournment of the poll would hardly vitiate the election, unless it were shewn that the result was affected by it."

9. *Punishment of Returning Officer.*] If the conduct of the returning officer at an election has been found improper as in the opinion of the select committee, they may call for censure, and to render him liable to the penalties inflicted by the House in cases of misconduct, they should report specially to the House, and the House will then deal with him as they think proper. In some

(a) *Ante*, p. 39.

cases the returning officer, when so reported, has been ordered into the custody of the Serjeant-at-Arms, and has then been brought before the House to be reprimanded and then discharged. *Liskeard*, 2 Peck. 326; *Great Grimsby*, 1 Peck. 74.

In cases of gross misconduct he will be committed to Newgate. *Middlesex*, 2 Peck. 19.

CHAPTER IX.

PETITIONS ON THE GROUND OF RIOTS, &c., AT
ELECTION.

1. *Riots and Intimidation, their effect on validity Election.*
 2. *When Poll Books, &c., destroyed.*
 3. *Interference of Persons in Authority.*
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1. *Riots, &c., at an Election.*] What effect the occurrence of riots, and intimidation at an election may have upon the validity of such election, must next be considered.

In the Journals of the House of Commons, and in some of the older reports of cases, there are to be found a great number of instances where elections have been declared void on account of the occurrence of riots (&c.). It must be remembered, that at the date of these decisions sheriffs and other returning officers were not armed with the same powers of adjourning the poll

(a) *Glan.* 143; *Pontefract*, 1 Jour. 797; *Southwark*, Jour. 25; *Coventry*, 15 Jour. 278; *Knaresborough*, 2 Peck. 312; *Morpeth*, 1 Doug. 147; *Nottingham*, 1 Peck. 8; *Galway*, 1827, 82 Jour. 61; and see cases cited in note *Coventry case*, P. & K. 338 (1833).

case of riot, and of quelling disturbances, that they have at the present day. It would appear that in most of the cases above referred to the disturbances were of such a nature that it was impossible to proceed with the business of the election.

In the *Morpeth case*, 1 Doug. 417, the conduct of the mob was so outrageous that they compelled the returning officer, after he had declared the result of the election, to make a false return, and insert the name of the member who was in a minority. In the *Galway case*, 1827, the riots were proved to have been of a most alarming nature. In the *Coventry case*, 1827 (referred to in *Coventry case*, P. & K. 335), the election was not avoided, though the committee reported "that during the election riotous and tumultuous proceedings had taken place in the city, and that grievous outrages and assaults had been committed on the persons of several electors and others during the said election." This question has been a good deal discussed on several occasions since the passing of the Reform Act.

In the *Coventry case*, P. & K. 335, it was proved that there was great rioting during the time of polling ; that several of the petitioners' voters had been driven away from the hustings, but that at a later period of the day many of the voters for the petitioners were enabled to poll, and that if all the electors who remained unpollled at the close of the election had voted for the petitioners, the petitioners would not have had a majority. The committee resolved, "That the conduct of the sheriffs of the city of Coventry was highly culpable in not taking sufficiently prompt and efficient measures for securing order and regularity during the

election, but they declared the sitting members elected."

In a subsequent case (*Roxburgh*, F. & F. 467), riots were of a most serious character. Some of voters who had voted against the inclination of mob were assaulted, had their clothes torn off them and were then thrown into the river. The lives of several were put in danger from the violence made of. In consequence of the violence used towards those who had voted, many voters refrained from going to the poll. The polling was adjourned for two hours at some of the polling places, in consequence of riots. The committee however upheld the election; they resolved, "That at the last election for the county of Roxburgh, riotous and tumultuous proceedings took place, in consequence of which prosecutions were instituted, and certain of the offenders were convicted. That the committee are of opinion that the riots were not of such a nature, nor of so long a duration as to prevent the votes of the electors being taken."

In a more recent case, *Cork County*, Bar. & A. 534 (1842), the petition complained, that the election had not been free, that there had been an organized system of agitation throughout the county to deter electors from voting for the petitioners, and that by these means the election had been obtained. It appeared in evidence, that serious riots had taken place in some parts of the county, and that several voters who had supported the petitioners had been assaulted and seriously hurt, that an adjournment had been applied for on account of these disturbances, and had been refused as unnecessary. That at the close of the election, a majority of the whole number of electors

remained unpolled. The case was very fully argued; it was urged, that as the agitation was systematic, and of such a nature as to deter persons of ordinary courage from going to the poll, and as the majority of the electors had not polled, the election and return ought to be set aside, without calling upon the petitioners to carry the evidence further; for, if some were detained from voting by reason of the violence used, others might have been terrified into giving their votes for the candidates they were opposed to for the sake of personal safety. On the other hand, the *Coventry case*, P. & K. 1833, and the *Roxburgh case*, F. & F., were relied upon as establishing the principle, that the petitioners are bound to prove that the majority at the election was the result of the violence used, before a committee will declare the election void; that the returning officer was not bound to adjourn the poll, as that was a matter entirely in his discretion. The committee resolved that the sitting members were duly elected (a).

In the case of *New Ross*, 1853 (b), the petition contained an allegation, "That the election of the sitting member was carried by violence, threats, and intimidation on the part of himself and his friends." Evidence was given in support of this allegation by a

(a) When this resolution was moved in the committee, an amendment was proposed, that "The system of outrage and violence was of such a nature at the late election for the county of Cork as to be calculated to strike terror into the minds of the electors of that county, and to destroy all freedom of election." The committee which consisted of seven members, divided; three in favour of the amendment, four against it.

(b) *Printed Minutes*, 16, and 2 P. R. & D. 196.

gentleman who had been a candidate at the nomination, but who had withdrawn before the polling commenced: he stated that when he attempted to canvass a mob collected around him; that he was hooted at and pelted; that on going to his committee room he was followed by the mob, and was unable to leave until guarded by the police; that the Riot Act was read and the military were called out; that the moment he came to his committee room the windows were shattered to pieces with stones; that he then withdrew from the contest, not as it would appear from fear of personal consequences to himself, but "because he could not possibly be at the head of the poll, and representations were made to him, that by asking persons to fulfil their promises to vote for him a great injury would be done to themselves, as a system of exclusive dealing had been threatened." At the close of the petitioner's case, the committee stated that they thought there was no case of intimidation made out.

In the *Cork case* (a), in the same session, a great deal of evidence was given in support of charges of intimidation and disturbance. The committee declared the sitting members duly elected, and reported to the House "That the evidence adduced shews, that during the last election riotous and tumultuous proceedings took place in the said city, and that serious outrages and assaults were committed on the persons and property of several electors and others—that intimidation was exercised upon and threats used towards several voters for the purpose of influencing their votes (b).

(a) 2 P. R. & D. 233.

(b) *Ante*, p. 147.

That in consequence of a riotous disturbance at one of the polling-booths in the Lee Ward, the deputy-sheriff adjourned the poll till the next day, when it was again opened and the polling proceeded with."

In the case of *Clare*, 1853, serious riots had taken place; and evidence was given that the effect of the riot and intimidation which had taken place at Six Mile Bridge, had been such as to deter several of the voters from polling. It appeared that the petitioner had polled only four votes less than one of the members returned. The numbers being for Sir *J. F. Fitzgerald*, 1152—for Mr. *C. O'Brien*, 1141, and for Mr. *Vandeur*, the petitioner, 1139. The committee reported that the sitting members were *not duly elected*—that a system of intimidation had been organized at the late election for the county of *Clare*, which resulted in a riot at Six Mile Bridge, deterring voters from exercising their franchise—that it appeared that a mob, professing to be supporters of the petitioner, created a riot in *Kilrush*, but that it had not been proved that any elector was prevented thereby from exercising his franchise—that the sitting members had not in any way encouraged or been cognizant of the riotous proceedings" (a). *Printed Minutes*, 108 Journ. 50-106, and 2 P. R. & D. 244.

These cases seem to establish this rule, that the

(a) Whenever the sitting members can be shewn to have encouraged riotous proceedings at an election, they will forfeit their seats on the ground of having exercised undue influence, although it cannot be proved that the result of the election was affected thereby. And the same result will follow if their agents have been guilty of such conduct without their knowledge. *Ante*, p. 157.

election will not be invalidated by reason of the riot unless it *be proved* to the committee by the petitioners that the result of the election was affected thereby. The principle may be sound, but the difficulty lies in establishing by evidence what has been the effect of the disturbance. In cases where a riot has occurred at a late period of the election, there is not the same difficulty, for all that preceded the disturbance could not have been affected by it; and it would be comparatively easy for a committee to decide what effect the riot had had upon the election, by ascertaining the number of voters who had not polled at its commencement. But in cases where systematic intimidation and violence have preceded and accompanied the whole business of the election, who can say that the result has not been affected by them? How difficult to bring positive evidence of it. If some of the voters have been threatened with ill usage, while others are treated with actual violence for voting in a certain way, how can it be known what the other electors may have done in consequence? Some abstain from voting, others vote against their consciences and their expressed intentions.

But how can this be proved? Are all the voters to be called to say they would have voted differently but for the violence? This would be very dangerous in principle, and it can hardly be expected that the men would make such an admission; it is clear that the canvass books, shewing lists of promises, are evidence of the intentions of the voters. *Rosbury F. & F.* 474.

Mr. Rogers, in his work on *Elections*, p. 240, says "As soon as a serious riot has been proved, the freed

of elections has been violated; *prima facie*, therefore, the election and return are void, and it is for those who uphold the election and return to shew that the disturbances did not, in fact, alter what would have been the result of the election, supposing no riot had taken place."

When voters have been forcibly removed from their friends, surrounded by angry partisans, brought to the poll by an infuriated mob, and threatened with violence if they do not vote in a certain way, how can it be said that there has been a free election?

Freedom, is of the very essence of popular elections. In an early statute, 3 Edw. 1, c. 5, it is enacted, "That because elections ought to be free, the King commandeth that no great man, or other by power of arms, nor by malice, or menace, shall disturb any to make free election."

It would seem to be a sounder principle to hold, whenever there has been a general system of violence and intimidation occurring during the whole of an election, that there has been no free election, and that the proceedings have been thereby vitiated.

2. *Destruction of the Poll Books.*] When the conduct of a mob is of so violent a nature that they destroy the poll-books and the other evidences of the election, the returning officer would be obliged to make a special return of the fact if he could obtain no reliable information of the numbers who had polled; but if he could ascertain, either from the check-books or other sources, what numbers had polled for each candidate, he would be justified in making his return accordingly. The loss or destruction of the poll-books

would afford no ground for impeaching the validity of the return. Those who disputed the election or return would, in such a case, be obliged to supply the evidence of the state of the poll from other sources. *Cardigan Bar. & Aust.* 264; *Longford*, F. & F. 222 and 259.

3. *Interference of Peers, &c.*] Though the interference of peers, ministers, and persons in the employment of the Crown, in elections, is a breach of the privileges of the House of Commons, and a matter into which they would certainly inquire when brought under their notice, still such unconstitutional interference is no ground for impeaching the validity of an election. In the *Stamford case*, 1848, and *Gloucester*, 1848, committees were appointed to inquire into and report upon such alleged interference. See *Privileges Reports*.

In the *Worcester case*, 3 Doug. 255, where a petitioner complained of the interference of a peer, the committee thought that they were bound to entertain the question, as it was alleged in the petition, and they were by their oath sworn to try the matter on the petition.

In the *Hertford case*, P. & K. 546, the petitioner, among other things, complained of unconstitutional interference in the election on the part of the *Marquis of S.*; the committee heard evidence with regard to it, but came to no resolution on the subject (a).

Committees are always sworn to try the matter on the petition; but as they are by the 68th section

(a) *Vide Warwick*, P. & K. 538.

11 & 12 Vict. c. 98, declared to be a committee appointed to *try and determine the merits of the return and election*, it may be doubted whether a committee is *bound* to enter upon matters which cannot affect the merits of the election or return, merely because they are stated in the petition.

CHAPTER X.

SCRUTINY.

1. *Lists of Voters objected to.*
 2. *Practice in Scrutiny.*
 3. *Disqualified by Bribery, &c., at Election.*
 4. ————— *by Employments at Election.*
 5. *Cases of Personation.*
 6. *Correcting Mistakes at the Poll.*
 7. *Disqualified by receipt of Parochial Relief.*
 8. *Continuous Disqualifications.*
 9. *Disqualifications after 31st July.*
 10. *Register conclusive of Continuance of Qualification.*
 11. *Opening Register, England, Ireland, Scotland.*
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WHEN the petition alleges that the unsuccessful candidate at the election had the majority of legal votes, and ought therefore to have been returned: the manner of ascertaining this is by a scrutiny of the votes. Electors, on behalf of a candidate, have the same right to claim the seat for him, as the candidate for himself.

The inquiry by way of scrutiny is sometimes entered upon before the other charges in the petition are dis-

posed of; but this is not an expedient course when it is probable that those defending the seat will be able to disqualify the candidate for whom the seat is claimed, as in that case the whole expense of obtaining the majority on the poll will be lost. Though counsel, as has been observed in the Chapter on PRACTICE, are usually allowed to follow their own discretion as to which part of the case they will proceed with first, a committee sometimes refuses to enter upon a scrutiny until the charges of bribery are disposed of. *Lyme Regis*, 1848, Printed Minutes (*a*).

1. *Lists of Voters intended to be objected to.*] Whenever it is intended to enter on a scrutiny, the parties on each side, those defending as well as those attacking the seat, must deliver in lists of the voters intended to be objected to, in compliance with sect. 55 of 11 & 12 Vict. c. 98.

"The parties complaining of, or defending the election or return complained of in any election petition, shall (except in the case where no one defends the seat (*b*)) by themselves or their agents deliver in to the clerk of the general committee, lists of the voters intended to be objected to, giving in the said lists the *several heads* of objection, and distinguishing the same *against* the names of the voters excepted to, not later than six o'clock in the afternoon on the *sixth* day next before the day appointed for choosing the committee to try the petition complaining of such election or return."

(*a*) *Ante*, "Practice," p. 335.

(*b*) 11 & 12 Vict. c. 98, s. 52.

These lists are referred by the general to the select committee; and no objection can be taken to any voter except those stated in the list. 11 & 12 Vict. c. 98, s. 74. This is a statutable direction and is most strictly observed.

A common way of preparing the lists is to form them into classes, with headings containing the objections against the voters in each class. See *Weymouth*, Bar. & Aust. 108, where the names were bracketed together, with a reference to objections prefixed as headings of the lists. This was held to be sufficient compliance with the act.

In another case, in the list of voters objected to, there was written against the name of a voter, not the heads of objection themselves, but only a *reference* to the objections stated against the name of another voter; this was held to be a sufficient compliance with the act. *Lyme Regis*, Bar. & Aust. 462.

In the *2nd Lancaster case*, 1848, Minutes, 17th May (a), objection was taken to the mode in which the petitioner's lists had been prepared. At the top of a page was written "The following is a list containing the names of the voters objected to, by and on behalf of the petitioner, with the several heads of objection, distinguishing the same against each voter named,"—the objections stated were the receipt of parochial relief: a number of names followed this heading to the list, and there were three or four pages of names attached to the first page, but which other pages had no separate

(a) The Minutes of the *2nd Lancaster case* were not printed; the points decided in that case, which are cited in this Chapter, are taken from the original Minutes in the House of Commons. See also 1 P. R. & D. 147.

heading. The committee considered the lists sufficient.

Votes to be added to Poll.] In cases of scrutiny it is frequently sought to add names to the poll as well as to remove them from that of the adversary. It has never been required in any of the enactments on this subject, that lists of the votes intended to be added, should be handed in.

In the *Rutlandshire case*, Journ. 1711, prior to the Grenville Act, the House required the sitting member to deliver in lists of the voters he intended to add to his poll.

In the *Bedfordshire case*, 2 Lud. 392, no lists were given in of rejected votes intended to be added to the poll. The committee resolved "that the parties should deliver to each other on the next day, a list of all such persons as they meant to add to the poll; and that the consideration of all such votes should be deferred till all the votes already objected to should be decided." See *Orme on Elections*, p. 324; 2 Roe. 228.

Though lists of such votes intended to be added, need not be delivered into the general committee, notice ought to be given by the parties on either side, to the others, with regard to such votes. If notice had not been given, a committee would probably refuse to proceed in the inquiry until the lists had been interchanged.

Accuracy required in the Lists.] Care should be taken in the preparation of the list of voters, to insert every ground of objection intended to be relied upon, to state such grounds of objection *distinctly*, and to insert the name of the voter accurately, with his right number on the register. Committees have frequently refused

to entertain any objection to a voter where there has been a *misnomer*. *Middlesex*, 2 Peck. 50. *Humphry Tunkinson*, was objected to as *Henry Tomkinson*. The committee refused to enter upon it. In the *Galway case*, P. & K. 525, *W. Mitten* was objected to as *W. Miller*; the variance was held fatal. So also in the *Dublin case*, F. & F. 203, where *Beresford Collins* was objected to as *Ramesford Collins*, and *John Furley* was objected to as *James Furley*, and *James Egan* as *James Ewgn*, the committee held the misnomers to be fatal. But in the same case they held, that where *Wm. Lawlor* was objected to as *Wm. Lowler*, the discrepancy was not of such a description as to prevent the vote being gone into. In the *Fowey case*, C. & D. 166, in the list of persons intended to be added to the poll, *Francis Watty* was described as *Thomas Watty*, the committee allowed evidence to be given of identity; but where *Wm. Nicholls the elder* was called *the younger* on the list, there being two of the name in *the parish*, the committee refused to consider the vote. It is impossible to reconcile or explain the decisions of different committees, and in some instances the decisions of the same committee.

In the *Dublin case*, a voter whose name was *Patrick Faulkner* was entered in the poll book as *Matthew Faulkner*. In the list of voters objected to he was called *Patrick*, and there was nothing in the list to identify him with the person voting. The committee decided that the identity should have been stated in the list of objections, and refused to allow the vote to be questioned (a). In the same case, a voter named

(a) 1 P. R. & D. 199.

Lanley was objected to as *Ladley*, the committee refused to allow the vote to be questioned (a).

Where there were two persons of the same name in the barony, and there was nothing in the list to distinguish which of the persons was meant, the committee refused to enter on the vote. *Galway*, P. & K. 521 (b). In the *Monmouth case*, K. & O. 411, however, the committee allowed evidence to be given to explain which of two persons of the same name, living in the same street, was the person objected to. If the number of the voter on *the register* had been given in this case there would have been no difficulty.

In a list given in, an erroneous number was given as the number of the voter on the *poll-book*. The objection was waived. *Kingston-upon-Hull*, K. & O. 426. The number on the *poll-book* could not assist in identifying the voter; had the number on the *register* been given erroneously, the objection would probably have been fatal.

Where a voter was described in the list of objections as residing at the place attached to his name in the register, but which was not his residence in fact, the committee considered the description sufficient. *White-side's case*, 2nd *Lancaster*, 19th May, 1848.

The ground of objection must be accurately stated. Where the actual objection intended to be raised against the voter was, that he was a letter carrier in the employ of the Post-office, and the objection stated

(a) 1 P. R. & D. 200.

(b) See also on same point, *Dundalk*, 1 P. R. & D. 97, *Byrne's case*.

in the lists was, that "he was at the time of the election employed in the *collection of the revenue*," the committee would not permit the case to be entered upon. *Belfast*, F. & F. 604; and see *Wigan*, Bar. & Aust. 185. Where a voter was objected to on the ground that he had been bribed, evidence was allowed to be given that he had made a wager on the result of the election. *Windsor*, K. & O. 194.

As the allegations in a petition, praying for a scrutiny, are in very general terms, it is the more necessary that the objections in the lists delivered, should be specific. *Rochester*, K. & O. 96—115; *Youghall*, F. & F. 402.

2. *Practice in cases of Scrutiny.*] In cases of scrutiny the inquiry into each vote is a separate case, and is opened, answered and decided upon by itself.

Where upon a scrutiny the banking account of a private individual was produced by the banker's clerk, in order to prove the payment of a cheque drawn by that individual in favour of the voter, whose vote was under investigation, upon the objection that he was bribed by the payment in question; the committee would not allow a general inspection of the account to the party calling for its production, but confined it to the entries relating to the voter. *Whicker's case*. *Lyme*, B. & Aust. 525.

During the inquiry into the validity of a vote a question was asked, in cross-examination, for the purpose of shewing agency in a certain person who had been mentioned: the question was objected to as irrelevant to the inquiry as to the validity of the vote. The

committee refused to allow it to be put. *Marshall's case*, 2nd *Lancaster*, 18th May, 1848, Min. (a).

When a witness is called with regard to one vote, he ought not then to be cross-examined as to matters affecting another vote. *Shafterbury*, F. & F. 370. Held, "that no question could be put in cross-examination which might tend to vitiate or substantiate any other vote in the objected lists." *Great Marlow*, Bar. & Aust. 49; *Wigan*, ib. 140; *Lyme Regis*, ib. 521, 525. A witness called to support an objection to a vote was allowed to be cross-examined as to facts relating to his own vote, for the purpose of *discrediting* him. *Lyme*, Bar. & Aust. 459-468.

In a case where a witness had been so cross-examined as to his own vote, with a view to discredit him, the committee allowed his admissions to be read in evidence against him when his own vote was under consideration. *Wardle's case*, *Wigan*, Bar. & Aust. 139; *Galway*, P. & K. 521.

Unless this is agreed to by the other side, this does not seem to be a correct mode of proceeding. The inquiry into each vote is as it were a separate suit, and though the voter is considered a party to the suit, it is only when his own vote is under consideration.

It is usual to require one class of objections to be concluded before another is entered upon. In the *Great Marlow case*, Bar. & Aust. 98, the committee decided "that one class of objections be exhausted or abandoned before counsel proceed to another class." In the *Wigan*, Bar. & Aust. 159, the same rule was acted upon; the committee had in this case passed a

(a) 1 P. R. & D. 155.

preliminary resolution to that effect. So likewise in the *Nottingham case*, Bar. & Arn. 187, the committee passed a preliminary resolution, "that with respect to objected votes the committee expect counsel to exhaust one class of objections before proceeding to another." In the 1st *Harwich*, 1851, Printed Minutes, 31, the committee acted on this rule.

It happens sometimes that a voter is objected to on several different grounds, and that his name is inserted in *different* lists, according to the particular class of objection.

This is not an expedient course, for if the committee insist on concluding one list before entering upon another, some of the objections to the voter could not have been heard at the time they decided to retain his name on the poll. In the *Kinsale case*, 1848, Printed Minutes, 194, an objection was taken to a voter that he had been bribed by the payment of his rates; the objection was heard, and the committee decided to retain the vote. The petitioner's counsel then proposed to pass from that class of bribery by payment of rates, and to attack the same voter on the ground of non-payment of rates. The committee *resolved*, "That the committee having decided to retain the vote upon the poll, they could not enter into any further objection to it, and they requested to be put into possession of every objection to a vote before they were called upon to decide upon the validity of the same." In one case, where the different objections were in separate classes, the committee postponed their decision until the other class was entered upon. *Part's case*, *Wigan*, Bar. & Aust. 163.

It is the usual practice, in cases of scrutiny, for the

parties to give notice to the other side as to what particular cases they intend to proceed with from day to day; this is entirely a matter of arrangement between the parties, and if the list given in one day is not then exhausted, they are not precluded from giving in different names on the following day, subject always to the rule that one class must be exhausted before another is begun. *Wigan*, Bar. & Aust. 159; see also *1st Harwich*, 1851, p. 26; *Longford*, F. & F. 221.

In the *Bedford case*, F. & F. 432, the chairman requested that a list of the ten voters whom the petitioners intended first to attack should be given to the agent of the sitting member, and that a copy of the list should be given to the committee, which was accordingly done. A similar order was made in the *Dublin case* (a).

In the *Ipswich case*, F. & F. 292, where the parties differed as to the interpretation to be put upon the notice as to the cases to be proceeded with, the committee refused to interfere to put a construction on a notice ambiguously worded, passing between the parties for *their mutual convenience*.

In the *2nd Lancaster*, 1848, a great number of voters were objected to on each side for having been in the receipt of parochial relief. The counsel for the sitting member applied for an adjournment, that the parties might revise their respective lists; this was agreed to by the other side, and sanctioned by the committee. A great number of cases were, in consequence, abandoned on each side when the committee re-assembled.

Re-opening Case.] Where an objection to a vote

(a) 1 P. R. & D. 196.

had been partly gone into, and through a misapprehension with regard to certain facts the counsel abandoned the objection, the committee, who in consequence of their immediately adjourning had come to no formal conclusion on the vote, allowed the objection to be reopened and proceeded with. *Marlow*, Bar. & Aust. 52. See *Dundalk*, 1 P. R. & D. 96.

Postponement of Cases.] The counsel in support of the vote, at the close of the case against the vote applied to the committee to have the further consideration of the case postponed on account of the absence of a necessary witness, who had been in attendance on the previous day, but who was not then present. The committee refused the application. *1st Harwick*, 1851, p. 175. Similar application refused, *ib.* p. 226.

In the *Reading case*, F. & F. 553, the committee adjourned the consideration of a vote to enable the petitioners to procure evidence in support of it.

In the *Monmouth case*, K. & O. 412, the committee having decided that the evidence should be confined to those witnesses who were examined before the revising barrister, they acceded to an application that the further consideration of the vote should be deferred until those witnesses were produced.

In general, committees are very unwilling to grant an adjournment or postponement of a case, when the occasion for it arises from the default of the parties themselves (a); there is not, however, the same objection to granting the postponement of a particular case, or class of cases, as there is to the adjournment of the committee, as the committee may in the former case proceed with other votes.

(a) Practice, *ante*, p. 352.

When an unexpected decision has been come to upon some particular vote, committees have often allowed the remainder of the class to be postponed, in order that the parties may consider what course they will adopt; or that they may be able to strengthen the other cases in the class which are affected by the decision. *Longford*, P. & K. 179; *Shaftesbury*, F. & F. 365; *Bedford*, P. & K. 147; refused in *New Sarum*, P. & K. 260.

When the petitioner has been placed in a majority, the sitting member then reduces the petitioner's poll, and they so continue *alternis vicibus*, to strike off votes until one is exhausted. *Petersfield*, P. & K. 46; *Wigan*, Bar. & Aust. 230.

When two candidates petition against two sitting members, it is not necessary that they should be placed in a majority above both the sitting members before the poll of the latter is attacked. *Wigan*, Bar. & Aust. 231. The chairman, in this case, refused to interfere, saying that the committee would leave the matter in the hands of counsel. See *Kingston-on-Hull*, F. & F. 562.

If, at any time, the sitting member withdraws from the inquiry, the petitioner must continue to strike off votes until the person for whom the seat is claimed is in a majority. A committee will not allow the petitioner to proceed to strike off votes which are objected to, after the majority has been obtained by him. *Monaghan*, K. & O. 43. In the *Carlow County case*, K. & O. 471, the committee refused to continue the scrutiny after the petitioners had established a majority in their favour, the defence of the seat having been abandoned.

In cases of scrutiny, as has been before observed, each vote forms a separate case. Sometimes one counsel opens the objections against the vote and when the evidence has been given another sums it up, as in other inquiries before committees. In the *Lancaster case* (a), however, the committee resolved that there should be one speech, either in the shape of an opening or summing up, on the part of those who impugned the vote, and that there should be one speech on the part of those who defended the vote, except in the case where witnesses were called, which, of course, would give the right to the party attacking the vote to have a reply.

Having now considered the practical mode of proceeding in cases of scrutiny, the next matter to be discussed is what objections will a committee entertain against the individual voters.

3. *Disqualification from Bribery, &c. at Election.*] Every person who has received a bribe in order to induce him to vote for a particular candidate, in whatever form that bribe has been administered, will have his name removed from the poll upon proof of the facts.

The subject of bribery has been already fully dealt with in an earlier portion of this work. When the valuable consideration was actually given or promised to, or bargained for by the voter before he voted, such vote would always have been a bad vote and liable to be struck off the poll independently of the provisions of any statute. A question, however, will

(a) 1 P. R. & D. 155.

arise upon the construction of the 3rd section of the recent statute (a). That section, after defining one kind of bribery on the part of a voter, *viz.*, where before or during the election he receives or agrees, or contracts to receive money or valuable consideration on account of his vote, proceeds in the second branch of the section, to provide "that every person who shall *after* any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having, voted or refrained from voting, or having induced any other person to vote or to refrain from voting, shall be guilty of bribery." Now, suppose a voter to have voted without any impure inducement, but to have afterwards received a reward in the shape of head-money, payment for loss of time, or in any other of the modes which the Legislature has for many years been endeavouring to repress, will his vote thereby become a bad vote? Was he guilty of bribery? The language of the act seems distinct upon this point and certainly includes the case (b). He would have been undoubtedly guilty of bribery under the provisions of the 5 & 6 Vict. c. 102, s. 20, which first made the payment of head-money &c. after an election to be bribery. As the recent statute was passed "to consolidate and amend the laws

(a) 17 & 18 Vict. c. 102.

(b) Had it not been for the reasons given in the judgment in the case of *Cooper v. Slade*, 25 L. J. Q. B. 329, there would have been little doubt upon this point. The opinion of the learned Judges in that case cannot fail to create considerable difficulties in dealing with all questions of Corrupt Practices by election committees. *Ante*, p. 246.

relating to bribery," and to provide a measure of more "sufficient force to prevent corruption" than those then repealed, it is difficult to come to any other conclusion than that the Legislature intended to punish all persons who gave, and all persons who received rewards for the mode in which the franchise was exercised, although no bargain was made before the vote was given.

It is therefore submitted that election committees are bound to strike from the poll the names of all voters who shall be proved to have received payments for their votes after the election (a).

When a charge against a candidate of bribery has been inquired into before the scrutiny is entered upon, and certain persons have been *resolved* by the committee to have received bribes, it is a common practice to strike their names at once off the poll, without further inquiry. *Ilchester*, 1 Peck. 304; *Ipswich*, K. & O. 388; *Lyme Regis*, 1848, Minutes, pp. 346, 348 (b).

(a) There is nothing new in making a transaction have a retroactive effect so as to destroy a vote, which at the time it was given, was untainted by any corrupt bargain. By the 7 & 8 Geo. 4, c. 37, now repealed, persons who were employed in situations of profit connected with an election, within the period of fourteen days after the election was completed, were liable to have their votes struck off the poll as "utterly void and of none effect."

(b) It may be observed, however, that this practice is hardly consistent with the theory that a voter is a party to the suit when his own vote is being attacked, unless he happens to be the petitioner, or an elector defending the seat, the decision against the candidate may be said to be in some sense *res inter alios acta*. There is, however, no close analogy between civil suits and election inquiries.

Not only all those persons who have received money for their votes have been struck off, but also those who have bribed others, have, in some cases, been held to be thereby incapacitated. In the *Ipswich case*, K. & O. 388, the committee resolved, "that A. B. Cooke's vote be struck off the poll, on the ground of his having been guilty of bribing other voters." It is stated in a note to the *Youghall case*, F. & F. 410, that in the *Kingston-upon-Hull case*, 1838, the votes of several persons who had given bribes, were struck off the poll. There is no mention of this in the report of the *Kingston case*, F. & F. 560.

In the *Youghall case*, F. & F. 408, the committee in the first instance decided, that they would enter upon a class of objections that the voters *had bribed other voters*; they afterwards came to the resolution, "that upon reconsideration of all the circumstances of the case which had been submitted to their decision, that class of objections ought not to be further proceeded with."

The reason why a vote is struck off the poll is, either because it has been given under some corrupt influence, and is therefore no vote, or in consequence of some statutory provision; unless the committee adopt the views of the *Worcester committee*, K. & O. 255, where voters who had made wagers were "*mulcted* of their votes," it is not easy to see why the vote of the person bribing is to be struck off, unless he himself voted under some corrupt engagement. This idea of "*mulcting* voters in order that a committee *may do what they can in aid of the law*" (a) seems rather

(a) *Dutton's case*, K. & O. 255. See Chapter on BRIBERY, ante, p. 103.

unjust. The party who has bribed may be quite unconnected with the sitting member; if the vote is struck off, it is the member who is mulcted, as much as the voter (a).

It is in this particular view of bribery, that the votes of persons making wagers on the result of the election, have in general been held to be bad, on account of bribery.

Wagers.] These cases have been adverted to before in the Chapter on BRIBERY. In the *New Windsor case*, K. & O. 193, a wager of a sovereign between two voters on the result of the election was held to be bribery. It is clear that, in such a case as this, both were bribed if one was; so also in the same case (page 191) a wager by a voter with a person not a voter was held to destroy the vote. The same committee held (page 194) that the vote was invalidated, though the bet was for a bottle of wine with another voter.

In the *Worcester case*, K. & O. 254, the committee held that all bets made by voters, either with other voters or with persons who had no vote, equally invalidated the vote. In that case the committee informed the counsel, "that the grounds of their decision were, that as the law clearly held bets under circumstances of this kind, and upon subjects of a like nature, to be void, the committee *thought they ought to do what they could in aid of the law, by mulcting voters, under such circumstances, of their votes.*" In

(a) Offers of bribes are now included in the statutory definition of Bribery, while the "asking" for a bribe, which was within the 2 Geo. 2, c. 24, s. 7, is now excluded.

the *Youghall case*, F. & F. 404, where a voter had laid a wager on the result of the election, but it was clear that it was done without any corrupt intention, the vote was held to be good. In the *Monmouth case*, K. & O. 416, where the decisions in the *Windsor* and *Worcester cases* were cited, the committee refused to strike off the votes of persons betting, when it appeared that the votes had been *uninfluenced* by the wagers.

Voters treated.] Before the passing of the "Corrupt Purposes Prevention Act, 1854," the better opinion seems to have been that voters would not be struck off the poll on account of their having submitted to be treated at the election, unless it could be shewn that the vote had been given in consequence of the treating, which substantially made the case one of bribery. *Ipswich, Johnson's case*, F. & F. 280; *Kinsale*, 1848, Printed Minutes, 197, 210, 211, 214; *Lyne*, B. & Aust. 529. All doubt upon this question is now set at rest by the 4th section of 17 & 18 Vict. c. 102. This section, after defining treating, enacts that "every voter who shall corruptly accept or take any such meat, drink, entertainment or provision shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect."

In order, therefore, to strike a voter from the poll on this ground, it must be proved that he was treated within the meaning of the earlier part of the *fourth* section (*a*); that is to say, it must be shewn that he accepted such meat, drink, &c. from the can-

(a) 17 & 18 Vict. c. 102, *ante*, p. 109.

didate, or from some one acting on his behalf: that is to say, from some one who, according to the law of Parliament will be deemed an agent. The time at which the entertainment was given seems to be immaterial, if it were given either to influence the voter to vote or refrain from voting, or on account of his having voted or refrained from voting.

But suppose a voter to have received refreshments on the nomination day or polling day from some person unconnected with the candidate, but "on account of such voter having polled or being about to poll," would he have been treated? It is submitted that he was not thereby treated; for no giving of entertainment or refreshment falls within the definition of treating unless the candidate, either personally or by his agents, authorizes it, or subsequently sanctions it by paying for some portion thereof.

Are persons guilty of undue influence liable to be struck off?] If the rule, laid down in the *Worcester case*, K. & D. 255, "that it was right to mulct voters of their votes if they had given bribes to other electors," be adopted as good law, it seems to follow that a voter who has endeavoured, whether successfully or unsuccessfully, to influence a voter by means of threats, force, violence, or restraint, will be liable to be struck off the poll. On the other hand, will the timid voter, who has been unable to resist the threats or violence of his neighbour, be deprived of his vote? It is submitted that he ought not. No doubt it is a great hardship to a candidate that he should be deprived of his expectation of the seat by reason of the threats, &c. of the supporters of his opponents. But at the same time it would be most dangerous if voters

were allowed to say, in order to place an unsuccessful candidate in a majority, "I intended to have voted differently, and I should have done so but for the threats used." The most trustworthy witnesses would be the last to come forward and make such an admission.

4. *Persons employed at the Election.*] Formerly persons in this position formed one of the largest class of the voters objected to in a scrutiny. By the 7 & 8 Geo. 4, c. 37, it was enacted, that every person who, during an election, or within six calendar months previous to such election, *or within fourteen days after it shall have been completed*, shall have been employed at such election as counsel, agent, attorney, poll-clerk, flagman, or in any other capacity, for the purposes of such election, and should accept or take from the candidate or any other person in consideration of, or with reference to such employment, any fee, &c., should be incapable of voting, and his vote (if given) should be utterly void and of none effect. A great number of cases will be found in the election reports decided upon this enactment; and as to what persons fell within the general definition of "other capacity." These have become immaterial, for this act is one of those included in the schedule to the 17 & 18 Vict. c. 102, as acts totally repealed (a).

There is now, therefore, no objection to any one

(a) In some recent manuals of election law it has escaped the attention of the learned authors that this act was totally repealed. As has been before pointed out, the repeal was intentional. *Ante*, p. 108.

voting that has been employed in some situation of profit during and for the purposes of the election. The employment must of course be *bond fide*. If a great number of voters were employed as messengers, porters, canvassers, for the purpose of securing their support, such employment being only colorable, would be but a cloak and thin disguise of bribery.

There are certain objections which may be taken to voters on account of their being employed in the Post-office, Customs, &c., which did not fall within the repealed statute here mentioned. These will be remarked upon hereafter.

5. *Personation.*] The vote of any person who is not really the voter on the register in force at the time of the election, but who pretends to be such voter, will be struck off the poll on proof of the facts. When a voter has been personated by some one else at the election, and comes afterwards to vote himself, his vote cannot be taken so as to be reckoned with the other votes, but it will be received by the returning officer or his deputy as a vote tendered; 6 Vict. c. 18, s. 91. See 13 & 14 Vict. c. 69, s. 98, similar provisions as to Ireland (a).

In order that such a vote may be added to the poll of the candidate for whom it was tendered, it should be named in the lists of votes to be added to the poll.

6. *Mistakes at the Poll.*] When the votes of any electors have been incorrectly recorded at the election, through some mistake of the returning officer or his

(a) *Ante*, p. 32.

deputies, upon proof of such mistake the poll will be altered, and the vote will be added to the poll of that candidate for whom the vote was actually tendered (a).

A voter may, at the election, *before his vote is recorded*, change the name of the candidate for whom he has expressed an intention to vote, *Stirlingshire*, F. & F. 542; but when once the poll-clerk has taken down from the mouth of the voter the names of the candidates for whom he votes, the elector has no power then to change his mind and say he intended to have voted for the other candidate. Should the poll-clerk, after he has once entered the vote, upon hearing the voter assert that he had made a mistake and had not voted according to his intention, alter the poll, the committee will correct the poll and place the vote as it stood originally upon the poll-books. It is true that the *Reading committee*, F. & F. 556 and 557, allowed votes to remain as altered by the poll-clerk, when the alteration took place where the voter himself had made the mistake. In *Oliff's case*, p. 556, the voter distinctly gave the names of the candidates for whom he voted, R. and P., and the vote was recorded; upon a card of thanks being given him, on behalf of R., the voter turned round and said he intended to vote for T., another candidate; the poll, after some discussion, was then altered by the poll-clerk. The committee allowed the poll to remain as altered. In *Corderoy's case*, before the same committee, the vote was altered on the book, the mistake having been pointed out to the voter by some one standing by; and in this case also the committee allowed the vote to remain as

(a) *Ante*, p. 36.

altered. These two decisions have always been condemned by the Profession, and are quite at variance with the other authorities.

Llewellyn's case, Monmouth, K. & O. 418. After a vote had been recorded for the petitioner, the mayor allowed the poll to be altered; the committee removed the vote from the poll of the sitting member, and added it to that of the petitioner. The *Taunton committee, F. & F. 299*, adhered to the same rule, that a vote once recorded cannot be altered.

When the mistake has been committed by the poll-clerk and not by the voter, the poll-clerk, on the mistake being pointed out to him, is justified in making the correction. If he should refuse to do so, the committee will correct the poll themselves *Bedfordshire, 1 Luders, 375*. So also in the *Bedfordshire, 1785, 3 Luders, 407*, the entries in the poll-book were corrected, the voters themselves being allowed to give evidence for whom they had voted, and the check-books being produced in order to compare the entries therein with those in the poll-book.

The same course was followed in the *Reading case, F. & F. 555*, when it was clear that the mistake was that of the poll-clerk. "It is obvious," says Mr. *Rogers*, "that a different rule would place the election in the power of the poll-clerk."

If votes are taken after the hour fixed by law for the closing of the poll, they will be struck off on a scrutiny. *Arundel, Glanv. 71*; and see *Bantoft's case, K. & O. 380*; *Beckham's case, ib. 382, ante, p. 47*.

7. *Receipt of Alms.*] Where a voter has received parochial relief, or "such other alms as by the law of

Parliament disqualify" (a), subsequently to the time allowed for making out the list of voters, from which the register in force at the election has been formed, there is no doubt that he is incapacitated from voting, and may be struck off the poll. *Sharman's case*, *Ipswich*, F. & F. 284; *Harrison's case*, *Bedford*, ib. 440, and *2nd Lancaster*, 1848, where several votes were struck off the poll for this reason. 1 P. R. & D.

It was contended, in favour of a vote, that the receipt of parish relief after the *teste* of the writ did not disqualify, because it was said that the *teste* of the writ was to be considered as the commencement of the election. The committee resolved, "that the voter, having received relief *previously to the time at which he tendered his vote*, was thereby disqualified." *White-side's case*, *2nd Lancaster*, 1848, 19th May, Minutes.

Where it was proved that a voter had been received into the union workhouse, and had there received sustenance, but no evidence was given to shew to which parish in the union the relief had been charged, it was contended, in support of the vote, that there was no evidence that this was *parochial* relief. The committee held the evidence to be sufficient, and struck off the

(a) Mr. Rogers, in his work on *Elections*, p. 104, says, "It seems to be a general principle that, with regard to charitable foundations and endowments, those only disqualify whose funds have formed a part of the parish resources for the relief of the poor, and have been managed by the overseer or other officer whose duty it is to provide for and pay the paupers, and have been conducted by his agency into the same channels, and applied to the same purposes to which they would have been applied if they had been the produce of the ordinary parish rates." See also *R. v. Halesworth*, 3 B. & Ald. 717; *R. v. Mayor of Lichfield*, 2 Q. B. 693.

vote. *Marshall's case, 2nd Lancaster, 1848, 18th May, Minutes.* Employment as a parish labourer is a receipt of parochial relief. *Bedford, P. & K. 128*; and see *Taylor's case, 2nd Lancaster, 1848, 18th May, Minutes.*

The voter is equally disqualified whether the relief is given to himself or to some one whom he is by law bound to support. *Okehampton, 1 Peck. 373*; *Taylor's case, C. & R. 99.* In the *Bedford case, P. & K. 130*, where the children of the voter, who were under the age of fourteen, were employed by the parish at a rate of wages lower than the ordinary scale, though no application had been made by the voter for relief on their account, and he himself was in full work and able to maintain them, this relief was held to disqualify the voter.

Where relief was ordered to be given to the voter by the board of guardians, on the application of his mother, there being no evidence that the voter ever authorized the making of the application, the vote was struck off. *Row's case, 2nd Lancaster, 1848, 18th May.*

In a case where the voter, James Townley, was objected to as having received relief, it appeared that no person of that name had applied for relief, the committee allowed evidence to be given that James Townley had been ordered relief under the name of *John Townley. 2nd Lancaster, 1848, Minutes.*

It was a good deal discussed before the *2nd Lancaster committee* in 1848, whether relief given to the ~~un~~emancipated children of voters, who were above the age of sixteen, would disqualify the voters. In *Harrison's case, Minutes, 19th May*, the relief had been

given, upon the application of the mother, to a son of the voter, of the age of seventeen, who resided with the voter, and was unemancipated. It was argued against the vote, that a father was by law bound to maintain his child so long as the child was a member of his family, irrespectively of the age of the child; and that the 4 & 5 Wm. 4, c. 76, s. 56 (a), which enacts, "that all relief given to or on account of the wife, or children *under the age of sixteen*, shall be considered as given to the husband of such wife, or to the father of such children," did not diminish the liability of the father to support his children above that age, under 43 Eliz. c. 2, s. 7. At the end of the 56th section there is this proviso: "Provided always, that nothing herein contained shall discharge the father and grandfather, mother and grandmother, of any poor child from their liability to relieve and maintain such poor child, in pursuance of the provisions of the 43 Eliz. c. 2." The provisions of this statute are further extended by 59 Geo. 3, c. 12, s. 26, which gives power to justices at petty sessions to make orders on parents for the relief of their destitute children; and these enactments were further enforced by the 78th section of the Poor Law Amendment Act (b).

In support of the vote it was argued, that the principle, that relief given to children was to be considered as given to parents, was not touched in the

(a) The Poor Law Amendment Act.

(b) The arguments, as here given, are extracted from the Original Minutes. The substance of them only is given, in order that the point raised before the committee may be better understood. See 2 Nolan on Poor Laws, 267; Leigh's Poor Laws, 123.

act of Elizabeth. The 43 Eliz. c. 2, s. 7, and the 59 Geo. 3, c. 12, s. 26, gave power to justices of the peace to order fathers and grandfathers to maintain their poor children or grandchildren. That it was by force of Poor Law Amendment Act alone, 4 & 5 Wm. 4, c. 76, s. 56, that relief to children *under* the age of sixteen was to be considered as given to the father, and that it was only while they were under that age, that the father would be disqualified on account of relief being given to them. The committee decided the vote to be good.

In consequence of this decision in *Harrison's case*, that relief given to unemancipated children above sixteen years of age did not disqualify the father, a number of other cases of this kind were at once abandoned; several cases also were given up, where the objections were, that the grandfathers, grandmothers, or grandchildren of the voters had received relief; these votes were objected to on the ground that the paupers being unable to maintain themselves, the duty to do so was thrown upon the voters by force of the two enactments already cited, the 43 Eliz. c. 2, and the 59 Geo. 3, c. 12.

The 43 Eliz. c. 2, s. 17, enacts "That the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, *being of sufficient ability*, shall at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of the peace of that county where *such sufficient* persons dwell, or the greater number of them at their general Quarter Sessions shall be assessed;

upon pain that every one of them shall forfeit 20s. for every month which they shall fail therein."

The 59 Geo. 3, c. 12, s. 26, enables "justices in petty sessions to make the order upon the father grandfather, mother, grandmother or child, *being of sufficient ability*, for the relief of such poor persons."

As ability to support the poor relations is the groundwork of the order, it is not easy to see that persons who might be called upon to support others can be considered as themselves paupers.

Excused Payment of Rates.] A great number of voters were objected to in the lists on each side, in the 2nd Lancaster, 1848, as having received parochial relief, by reason of having been excused payment of rates under the 54 Geo. 3, c. 170, s. 11. These cases were abandoned, as the order of the justices excusing the payment of the rates, was not made until after the election.

The objection, however, does not seem to be a tenable one. In the *Colchester case*, 1789, 1 Peck. 507, the committee directed counsel to speak to the following question: "Whether a person who has been rated and excused paying the rates upon his own application, is disqualified from voting for a member of Parliament for *Colchester*?" After argument the committee resolved in the *negative*. In a note to the *Taunton case*, 1 Doug. 369, it is stated, that in this case of *Colchester*, 1789, "The committee determined that persons rated to the poor, but who, on their own application, have been excused payment by the parish; and also persons never rated, or persons who although rated were never called upon to pay; and persons to whom, being rated and having paid, *the rate had been*

returned, were not disqualified as receiving alms." In *Chambers's Dict.* some other cases are cited from *Minutes* where the same point was decided. *Shrewsbury*, 1807; *Maldon*, 1808. Where a voter was excused the payment of his rates, because he maintained his mother, to whom the parish made an allowance of 1s. 6d. a week, which was never received by the voter himself, his vote was held good. *Shrewsbury*, 1807; *Minutes*, 10th March.

The case of *Mashiter v. Dunn* (a) has determined this point: the question there was whether a freeman who had been excused payment of his poor's-rate was entitled to be registered. *Coltman*, J. says: "The words of disqualification in 2 Wm. 4, c. 45, s. 36, are not to be strained so as to narrow the franchise, the extension of which is to be favoured rather than otherwise. There is, in my opinion, a substantial difference between the receipt of parochial relief, and the being excused by reason of inability, from bearing a parochial burden."

In England, Counties.] Whether the receipt of alms is a disqualification of a county voter who remains in possession of his freehold, has been differently decided. In *Essex*, 2 Luders, 584, four freeholders were struck off the poll for having received charity. And see *Cricklade*, 2 Luders, 567. In the *Bedfordshire case*, 2 Luders, 564, it was moved, "that parish alms paid to a freeholder do invalidate his vote, although he continues in possession of a freehold of the clear yearly value of forty shillings," but it passed in the negative.

(a) 6 Com. B. 30.

The 2 Wm. 4, c. 45, s. 36 (the Reform Act), applies only to the receipt of relief by persons who would otherwise be entitled to be registered for any *city* or *borough*. If, therefore, the receipt of alms creates a legal incapacity in a freeholder, it must be by force of the Common Law. See *Rogers on Elect.* p. 100.

In Ireland.] No such distinction can be taken between county and borough voters in Ireland. By the 13 & 14 Vict. c. 69, s. 111, it is enacted, "that no person shall be entitled to be registered in any year as a voter, for any *county, city, town, or borough* in Ireland, who shall within twelve calendar months of the 20th day of July, in each year, have received relief under the acts for the more effectual relief of the destitute poor in Ireland."

In Scotland.] The same distinction between county and borough voters, which has been said to exist in England seems to be recognised by the Scotch Reform Act, 2 Wm. 4, c. 65. At the end of sect. 11, it is provided, "that no person shall be entitled to be registered, *or to vote* for any *city, borough, or town*, who shall have been in the receipt of parochial relief, within twelve months previous to the last day of July in each year."

Whether a voter who had received relief before the 31st July, and had *not been objected* to on that ground before the revising barrister, and who has continued in the receipt of relief subsequently to the 31st July, can be struck off the poll on a scrutiny, though generally decided in the negative, seems to admit of some discussion.

In the *2nd Canterbury case*, K. & O. 315, where a voter had received parochial relief both before and

after the 31st day of July previous to the election, but no objection had been made to his name being on the register before the revising barrister, the committee refused to enter upon the consideration of the vote. And they came to this resolution "that this committee are of opinion that they are restricted by the Reform Act from entering into the consideration of the validity of any vote, which is on the register, and has not been questioned before the revising barrister." The same committee afterwards came to another resolution, which is, as Mr. *Rogers* observes, not very intelligible. Having been asked how far they intended their previous resolution to extend, the committee resolved "that they would not take into consideration any case, where the objection was on account of having received parochial relief, unless the objection was made before the revising barrister, *nor inquire into any vote whatever on account of relief given after the 31st day of July.*" This latter clause in the resolution would seem to lay down that, the receipt of parochial relief was not in itself a disqualification, and it is difficult to imagine that such was the opinion of the committee.

The *Ipwich committee*, K. & O. 386, in the same session (1835) refused to disqualify voters, who had received relief both prior and subsequently to the 31st July; and they came to the following resolution, "That where no objections had been made at the time of registration, the register is to be held conclusive as to the right of vote, with the exception of cases provided for by the Reform Act, by resolutions of the House of Commons, and in the case of appointments to public offices subsequent to registration." And see *Rochester*, K. & O. 121, same decision.

In a case cited in Mr. *Rogers's* work on *Elect. Com.*, p. 203, the *Monmouth case*, 1835, it is stated that "the committee held that every instance of receipt of parochial relief, subsequently to the 31st July, amounted to a disqualification; and that, as the barrister could not have heard the objection, the committee, if they adhered to their principle, that a voter was expected to retain his title unimpaired till the time of polling, were bound to hear and act upon the objection." Though it is not expressly stated that in this case the voter had received relief prior to the registration, from the terms of the decision of the committee, such would appear to have been the case.

It is observed by Mr. *Rogers*, in a note in his work on *Elections*, p. 99, "Committees seem to have considered every receipt of alms as a fresh disqualification, and will therefore disallow the vote of one who has received alms since the 31st of July, though he may also have received alms before that day, *and not have been objected to at the revision.*" With great respect for the opinion of so well established an authority, it seems clear that the majority, at least, of the decisions have been against allowing such votes to be questioned.

The 6 Vict. c. 18, s. 98, which defines the power of committees to inquire into objections to voters, enacts that "It shall and may be lawful for such committee to inquire into, and decide upon the right to vote of any person, who being upon the register, shall have voted in such election, so far as the same may be disputed on the ground of legal incapacity at the time of his voting under and by virtue of *any statute* now or hereafter to be in force, *or on the ground of any other*

legal incapacity at the time of his voting, which may have arisen subsequently to the expiration of the time allowed for making out the list of voters from which the register of voters in force at the time of election shall have been formed."

This enactment does not seem in any degree to vary the law on this subject from what it was under the Reform Act.

The question is, whether every receipt of parochial relief is not an incapacity arising at the time of the receipt. So that although the voter may have been in the receipt of relief before the 31st of July, if he receives relief after that period a "legal incapacity arises subsequently to the time allowed for making out the lists."

In the case of an incapacitating employment it is clear that the *same* disqualification continues prior to registration, and subsequently to it; but if a voter were in possession of some incapacitating office prior to the registration, and his name was left on the register, and subsequently to the 31st July he resigned that employment, and received some other occupation equally disqualifying, it could hardly be contended that his vote might not be objected to after the election.

In like manner it may be contended that every receipt of alms is a fresh and distinct disqualification of the voter.

By the Scotch Reform Act, 2 Wm. 4, c. 65, s. 11, not only is a voter who has been in receipt of relief within twelve months before the last day of July disqualified from being registered, but he is also disqualified *from voting*. As committees have always applied the same rule with regard to the consideration of votes

unobjected to before the sheriff in Scotland (a), that has obtained in similar cases in England, although the system of registration is very different in the two countries, it is probable that a Scotch voter, who had received relief before and after the 31st July might be considered entitled to vote, if his right had not been questioned at the last revision.

Continuous Disqualification.] It is provided, by 6 Vict. c. 18, s. 98, "that it shall and may be lawful for any committee to inquire into and decide upon the right to vote of any person who, being upon the register of voters in force at the time of such election, shall have voted at such election, so far as the same may be disputed *on the ground* of legal incapacity at the time of his voting under and *by virtue of any statute* now or hereafter to be in force, *or on the ground* of any other legal incapacity at the time of his voting *which may have arisen subsequently to the expiration of the time allowed for making out the lists of voters, &c.*

This enactment mentions two classes of persons: 1st, Those who are under a legal incapacity by virtue of any statute, such as commissioners and officers of Excise, Customs, and persons concerned or employed in the charging, collecting, levying or managing the revenue, or persons employed in the Post-office, &c. (b).

Chief, and other constables appointed under the Act for appointing county and district constables (c),

(a) *Post*, opening register in Scotland.

(b) 22 Geo. 3, c. 41.

(c) 2 & 3 Vict. c. 93, s. 9.

also borough constables appointed under the recent statute (*a*), Metropolitan (*b*) and Thames Police (*c*). All these, and others under similar statutes (*d*), are prohibited from voting while they hold their respective situations, and also for periods varying from six to twelve months after they have quitted them. Heavy penalties, varying from 10*l.* to 100*l.*, are also imposed upon such persons if they presume to vote.

The 2nd class in this section are persons who, at the time of their voting are under any other legal incapacity.

An important question here arises, whether the first of these two classes can vote at an election when they held the disqualifying appointment prior to the last revision of the register, and they were not objected to before the revising barrister on that ground. Do the words, "*which may have arisen subsequently to the expiration of the time allowed for making out the lists, &c.*" apply to the first class, or only to the second? The repetition of the words "on the ground of," seems to keep the statutory incapacity distinct and apart from the other legal incapacity, and to make the qualifying words in question only apply to the latter branch of the section. It is believed, that no committee has ever yet come to a decision upon the construction of this section. In the *Rochester case*,

(*a*) 19 & 20 Vict. c. 69, s. 9.

(*b*) 10 Geo. 4, c. 44, s. 18.

(*c*) 3 Wm. 4, c. 19, s. 9.

(*d*) The several statutable and common law disqualifications for being electors will be found in any of the works on Registration of Voters. It is quite foreign to the objects of the present work to insert them here.

K. & O. 107, the committee allowed an objection to be taken to a voter that he was in the employment of the Customs, although the objection had not been taken at the revision of the lists. While another committee in the same session refused to hear an objection to a voter, that he was in the employment of the Post-office, and which objection might have been taken before the revising barrister. *Windsor*, K. & O. 178.

These cases, which were decided on the 60th section of 2 Wm. 4, c. 45, are of little assistance in construing the 98th section of 6 Vict. c. 18. Under the Reform Act it was lawful "to impeach the correctness of the register, by proving that in consequence of the decision of the barrister the voter was improperly inserted or retained in the register." The later enactment defines expressly what objections may be taken before a committee. In aid of the construction here suggested, it may be observed that there is a sound reason for the distinction. It could hardly have been intended that persons who were prohibited from voting, under a heavy penalty should, notwithstanding, be able to have their names retained on the poll. In some cities, where there is a large force of paid police, they might be sufficiently numerous to decide an election (a).

Upon the other branch of the section there can be no doubt. Aliens, infants, and all other persons subject to a legal incapacity not created by statute, whose

(a) In many treatises on Election Law it has been assumed that voters, under a statutable incapacity, are in the same situation as voters under other incapacities; and that in both cases the objection can be sustained only when the disqualification has arisen subsequently to the revision of the lists.

names have been incautiously inserted on the register cannot be objected to on a scrutiny unless they have been retained by the express decision of the revising barrister.

10. *Register conclusive of continuance of Qualification in England.*] Before the passing of the 6 Vict. c. 18, objections were constantly taken on a scrutiny, that voters had parted with the qualification for which they were registered at the time of the election. It is now provided by the 6 Vict. c. 18, s. 79, "That at every election for any county, city, or borough, the register of voters shall be deemed and taken to be *conclusive evidence, that the persons therein named continue to have the qualifications which are annexed to their names* respectively in the register in force at such election.

Proviso as to Counties.] "Provided always, that it shall not be lawful for any person to vote at any election for a county where the qualification annexed to the name of such person shall have appeared annexed to his name in the preceding register, and such person, on the last day of July, in the year on which such register so in force was formed, shall have ceased to have such qualification, or shall not have retained so much thereof as would have entitled him to have had his name inserted on such register."

That is to say, if the voter shall have parted with his qualification, or so much of it as creates a qualification, before the 31st of July prior to the election, his vote may be questioned. In counties, as the register of the preceding year is reprinted, with the addition of the names of the new claimants, the names of persons

who have ceased to have a qualification on the 31st July often appear in such lists.

Proviso as to Boroughs.] It is further provided in sect. 79 that no person shall be entitled to vote at any borough election, unless he shall ever since the 31st day of July, in the year in which his name was inserted in the register of voters have resided, and at the time of voting shall continue to reside within the city or borough or place sharing in the election for the city or borough in the election for which he shall claim to be entitled to vote, or within *seven* miles thereof."

This distance is to be measured from different points according to the nature of the voter's franchise. If he be a voter under the franchise created by the Reform Act, the *seven* statute miles are to be measured from the city, borough, or place, or from *any part thereof*. 2 Wm. 4, c. 45, s. 27. But in the case of a freeman, or person voting under one of the rights reserved, he must continue to reside within seven miles from the place *where the poll for such city or borough* shall heretofore have been taken. 2 Wm. 4, c. 45, ss. 32, 33.

The mode of measuring is pointed out in 6 Vict. c. 18, s. 76. The distance is to be measured in a straight line on the horizontal plane from the point within any city, &c., from which such distance is to be measured. Provided that when there is an Ordnance map of the city and country surrounding, such distance may be measured and determined by the said map.

Residence.] The question, therefore, may not unfrequently arise whether a voter has ceased to reside. Residence is a matter of fact to be determined according to the particular circumstances in each case.

Where a man sleeps is, in general, his place of residence. *B. v. Adlard*, 4 B. & C. 772.

"The word '*resides*' where there is nothing to shew it is used in a more extensive sense, denotes the place where an individual eats, drinks and sleeps, or where his family eat, drink and sleep. *Per Bayley, J., R. v. North Curry*, 4 B. & C. 959.

A great number of decisions by committees on the meaning of the word "residence" will be found in the reports of election cases. It will be of more advantage to give the decision of the Court of Common Pleas upon the construction of this word in the 27th section of the Reform Act (a). A., a freeman of the borough of *Twokesbury*, resided with his wife and family, and carried on his business of wine merchant at *Gloucester*, more than seven miles from *Twokesbury*. He paid 9d. a week for the use of a bed-room and a dark closet in the house of a friend at *Twokesbury*, A. keeping the key of the closet, in which he deposited wine samples. He had slept in the bed-room twelve times in the six months before the 31st July. Tindal, C. J.—"I think the facts do not distinctly shew a residence by A., the claimant within the borough of *Twokesbury*. I do not mean to say that when the object of a residence is to obtain a vote, that circumstance would detract from the right of the party; but the real question here is, whether the claimant had a real *bonâ fide* residence in the borough. Now, first of all it is to be observed that the mere payment of rent would not be equivalent to a residence. The residence required by the statute must mean *an actual occupation* for some part of the

(a) *Whithorn v. Thomas*, 7 M. & Gr. 1.

time specified by the party himself, or an occupation by his family or servants." Mr. Justice Coltman says,—
 "It is undoubtedly true that a party may have two or more residences. In this case the claimant had a separate domicile, and the question is, whether there was the *animus residendi* with respect to the lodging in *Tewkesbury*." Maule, J.,—"The meaning of the term *inhabitant* has been considerably extended from what it originally imported, but that is not so with the term *resident*. There cannot be the smallest doubt that the claimant in this case had not in ordinary language a residence in *Tewkesbury*." Erle, J.—"I think that in the Reform Act the intention of the Legislature was, that a party who obtained a vote by residing in a borough should have some local interest there—referring to the ordinary meaning of the word *residence*, as conveying the idea of *home*. The fact of sleeping at a place by no means constitutes a residence; though, on the other hand, it may not be necessary for the purpose of constituting a residence in any place to sleep there at all. If a man's family are living in a borough, and he is absent for six months, but with the intention of returning, he will still be considered as residing there."

It may be useful here to call attention to some recent decisions by election committees on this subject. In one case the voter was a freeman of Lancaster, a single man, by trade a cabinet maker; he had been in the habit, when work was slack in Lancaster, of going away in search of work. He had left Lancaster about the middle of August, taking his tools with him to seek for work. For several months he wandered about the country as far as Bristol, Winchester and London,

in search of employment. He passed through Lancaster on his way to Penrith, where he had left his tools, a week before the election; and hearing of the election, he took a lodging and remained till it was over, when he started off from Lancaster again. He had no house in Lancaster; when he came there he took lodgings by the week. In support of the vote it was argued, that unless the voter intended to reside somewhere else, he must have had an intention to return to the place which had been his home. The committee held the vote to be good. *Wilkinson, 2nd Lanc., 1848, Minutes, 20th May, 1 P. R. & D. 167.* See also *Attwood's case, 1st Harwich, 1 P. R. & D. 306.*

It appears to have been assumed on the one side, and admitted on the other, both in the *2nd Lancaster case, 1848*, and also in the *1st Harwich, 1848*, that a committee has jurisdiction to inquire into the right of a voter to vote, when questioned on the ground of non-residence subsequent to the 31st July. There can be no doubt that this power existed under the Reform Act, and the question is whether it is taken away by the 6 Vict. c. 18, s. 98. There can be little doubt that the framers of the act, as it stood originally, intended to make the register conclusive evidence of the right to vote, except where there had been an express decision by the revising barrister on the particular vote, or when the voter had become subject to some incapacity. The distinction between *statutable* and *other* incapacities has been already considered (a).

Looking at the 98th section as defining the power of committees to inquire into the right to vote, where is the authority to question a vote on the ground of

(a) *Ante*, 417.

non-residence? Residence is an ingredient of the qualification. Non-residence is not "an incapacity." It is clear that throughout the Reform Act and the 6 Vict. c. 18, the expression incapacity is used with reference to the *personal* status or condition of the voter. If then a committee has a right to inquire into the loss of this ingredient of the qualification, it must be by force of the proviso to the 79th section, which was added in the House of Lords, as was also the one with regard to county voters. Unfortunately no corresponding alteration was then made in the 98th section enlarging the power of a committee on scrutiny to inquire into these two exceptions. But, as before observed, the power to inquire has never yet been questioned. In *Wilkinson's*, *Garth's*, and *Norman's* cases in the 2nd *Lancaster*, 1 P. R. & D. 167, and in *Attwood's* case, 1st *Harwich*, ib. 306, there was no objection taken on either side to the jurisdiction of the committee; and in the last case, *Attwood's*, the voter was struck off the poll on the ground, as it would appear from the evidence, that he had ceased to reside subsequently to the 31st July. The inconsistency here pointed out does not exist in the Irish Act.

Register conclusive in Ireland.] It is provided by the 13 & 14 Vict. c. 69, s. 85, "that the register shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election." And by the 104th section of the same act a select committee can only inquire into the same objections as those already mentioned in the case of English voters. There is this difference, however, that the proviso with regard to

the existence of the qualification on the 31st of July in the case of county voters, and also the proviso requiring the voters in boroughs to continue to reside until the time of voting are omitted.

Register in Scotland.] By the 19 & 20 Vict. c. 58, s. 44, it is provided, that "at every future election for any *burgh* or district of burghs, the register of voters shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election, and such persons shall not be required to take the oath of possession." The law has not yet been altered with regard to county elections in Scotland, but it remains as it was under the Reform Act, and it is therefore still competent to object that a voter for a Scotch county has parted with his qualification after the 31st July, and prior to the election.

11. *Opening the Register.*] Frequent discussions took place, in the sessions subsequent to the passing of the Reform Act, whether committees were empowered to inquire into the right of voters to be upon the register. In the great majority of cases, where the question was raised, the committee refused to entertain any objection to the voter which had not been raised and decided upon by the revising barrister.

In English cases this practice had become almost uniform before the passing of the 6 Vict. c. 18, but in cases from Ireland, where the system of registration was at that time different from that established in England, the decisions of committees were most conflicting.

All these questions are now set at rest by the 6 Vict.

c. 18, as to England, and by the 13 & 14 Vict. c. 69, as to Ireland.

English Cases.] The 6 Vict. c. 18, s. 98, after reciting that doubts have arisen as to the true intent and meaning of the enactment in the Reform Act, with respect to the power and authority of any committee to inquire into the validity or invalidity of the vote, of any person being on the register of voters in force at the time of the election, enacts "that it shall and may be lawful for any such committee to inquire into, and decide upon the right to vote of any person who, being upon the register of voters in force at the time of such election, shall have voted in such election, or not being upon such register shall have tendered his vote at such election, in case the name of such person shall have been specially retained upon such register, or inserted therein, or expunged or omitted therefrom, *by the express decision* of the revising barrister who shall have revised the lists of voters from which such register shall have been formed."

The Act then provides for the cases of *legal incapacity*, which have been already considered, and proceeds, "But that except in such cases or on such grounds as aforesaid, the register of voters in force at the time of such election, shall so far as regards the proceedings before such committee, be final and conclusive to all intents and purposes, as to the *right to vote* in such election of every person, who shall be upon such register."

Irish Cases.] The 13 & 14 Vict. c. 69, s. 104, which is almost a transcript of the 98th sect. of 6 Vict. c. 18, limits the select committee to the same power of inquiring into the right of any persons to vote whose

names are on the register in Ireland. *Waterford*, 2 P. R. & D. 87.

Express Decision.] In the 1st *Harwich case*, 1851, Printed Minutes, p. 77 (a), the committee came to this resolution, "That before the committee will enter into the case of any vote decided upon by the revising barrister, they will require evidence that the vote was specially retained, or expunged from, or inserted in the list by his decision; except that the committee will receive evidence of any legal disqualification having arisen since the 31st July, 1850."

In this 1st *Harwich case*, two voters, of the name of *Cobbold*, were objected to. It appeared that in the first instance, the revising barrister had struck both the names out of the list; but that afterwards, in consequence of some arrangement between the parties at the revision, the objections were withdrawn, and on the following morning the names were retained; the revising barrister was examined as a witness before the committee, and stated that he had decided that the names should be struck out of the list; but he did not recollect the subsequent arrangement to retain the names on the list, and he objected, on principle, to answer any questions with regard to it; this arrangement to retain the names was proved by other witnesses: the committee upon this evidence resolved, "That the evidence adduced before the committee, has not established the fact that the votes of J. Cobbold and J. C. Cobbold, were *specially retained* on, or expunged from, or inserted in the register, by the *express decision* of the revising barrister." Minutes, p. 86.

In this case the revising barrister objected to being examined as a witness by either of the parties; stating, that it was most anomalous, and contrary to all practice to call a Judge who has tried a case, to prove matters that occurred before him, which are quite capable of being proved by any other witness. The committee seem to have agreed in this opinion, that if the matters could be proved by other witnesses, the barrister should not be questioned on the subject, p. 88. And see Minutes, p. 139, where the committee resolved, "That the counsel for the sitting member should call some witness or witnesses, who were present at the registration, to answer or contradict the evidence given by the petitioner, before the revising barrister is examined on the question now before the committee; and that if any doubt should then exist on the minds of the committee, *they* will examine the revising barrister for such explanation as they may deem necessary."

It must, however, be observed, that it has been the constant practice to call the revising barrister to prove whether he struck out, or inserted names in the list. It has often been the custom for the barristers, under these circumstances, to give evidence *under protest*. *Wigan*, Bar. & Aust. 188.

In the *Lyme Regis*, Bar. & Aust. 510, the revising barrister, who gave evidence, dispensed with this form. Nothing is more frequent in practice, than the attendance of the Judges of the County Court, as witnesses to give evidence in cases of perjury, with regard to what has been sworn by witnesses before them. As the revising barrister usually makes notes at the time of the ground of his decision, and of the circumstances

attending the decision on the claim, no evidence can be so satisfactory on the subject as his.

The list itself will shew, whether a name has been struck out or added on the revision, and any one who was present, short-hand writers, or attornies, may speak from the notes taken at the time whether an express decision was come to or not.

Where an objection had been taken to a name being retained on the register at the revision in 1849, and the barrister then revising, decided to retain the vote, this decision was appealed from, and a case was afterwards drawn up by the revising barrister for the decision of the Court of Common Pleas. The case was never further prosecuted, and in 1850 the same vote was objected to again before the barrister revising in that year, the facts were not proved by evidence, but the case prepared in 1849 was read to the barrister as containing the facts to be decided upon. And the barrister decided upon that state of facts; the committee entered upon the consideration of the vote. See also *Adam's case, Monmouth, K. & O.* 416.

In a case before the 1st *Harwich*, 1851, p. 239 of Minutes, it was proved that one *Bagshawe* had claimed to be inserted on the register in 1850. An objection to this name had been intended to have been raised before the barrister, but in consequence of an arrangement between the parties, this was waived, and no notice in writing of the intention to oppose was given to the barrister. The committee distinguished this case from that of the *Cobbolds* given before, and allowed the objection to be gone into. As this was the case of a claim, the voter would have to prove his qualification; but, as a claimant may now be objected to, it is difficult

to see that the barrister in this case came to an *express decision* any more than he did in that of the *Cobbolds* already cited. And see *Lintot's case*, *Horsham*, K. & O. 272; and *Whysall's case*, *Wigan*, Bar. & Aust. 179.

Decision on Claims objected to.] Under the Reform Act there was no provision for objecting to claims; in several cases, however, the committees placed claims on the same footing as names objected to on the lists. By the 6 Vict. c. 18, s. 39, it is provided, that any person on any list of voters may oppose the claim of any person omitted from the lists, by giving notice in writing to the revising barrister of his intention to oppose the claim. See *1st Harwich*, 1851, p. 222 of Mins.

In the *1st Harwich*, 1851, Minutes, p. 239, the committee allowed an objection to a claimant to be gone into, although the objection was abandoned before the barrister; as claims may now be objected to in the same manner as names on the lists prepared by the overseers, this decision seems rather questionable.

Informal Notice of Objection, &c.] Where a voter has been objected to informally, and the barrister has on that account refused to hear the objection, he cannot be said to have decided on the right to vote. *Baker's case*, *Horsham*, K. & O. 272. But if the revising barrister has come to an erroneous decision upon the form of the notice of objection, it seems to be well established that the committee will go into all the objections that might have been raised to the retaining of the name. *Bedford*, P. & K. 118; *Ripon*, P. & K. 204. In like manner if the barrister has improperly rejected a *claim* for informality the com-

mittee will inquire into its validity. *New Sarum*, P. & K. 244.

Names omitted by mistake.] Mr. Rogers in his work on *Election Committees* (a) points out that there are some cases which have not been provided for either by the Reform Act, or the 6 Vict. c. 18, and where, though the barrister has come to no *express decision*, to omit or expunge the name of a person having a right to vote, still, the voter having tendered his vote at the election will be added to the poll.

These are cases, where the person tendering his vote has not been in fault himself, but has either through accident or negligence on the part of others, been omitted from the register.

The name of *S. Dawson* had been inserted in one of the lists made out by the overseers, and affixed to the church-doors, no notice of objection to it had been delivered; it was, however, accidentally omitted from the list which the overseers produced to the revising barrister, and which was signed by him. The name consequently was not inserted in the register. Dawson tendered his vote at the poll, when it was refused, and no entry was made on the poll-book of the tender; the committee added the name to the poll. *Southampton*, P. & K. 226.

In another case where the overseers had taken the borough lists to the barrister who was revising the county lists, and on discovering their mistake sent a *copy* of the list to the barrister revising the borough lists, who rejected this copy as valueless, the committee added the vote to the poll. *Droitwich*, K. & O. 57.

(a) Rog. on Com. p. 206.

So also where the overseer put a voter on the list with a wrong house inserted as his qualification, his vote having been tendered, was added. *Windsor*, K. & O. 163; *acc. Monmouth*, K. & O. 414.

Where the qualification of a voter was correctly described in the list of voters, as originally made out by the overseers, but by a mistake of the printer, its locality was misdescribed in the printed list fixed on the church-door, and produced before the barrister, and the name was, in consequence objected to and expunged at the revision, and the voter tendered his vote at the election; the committee added the name to the poll. It was proved that at the registration the overseer made an application to the revising barrister to amend the mistake of the printer and he refused to allow it to be done. *Seller's case*, *Lyme*, B. & Aust. 499—512. Mr. *Rogers* observes on this case, "The committee do not seem to have decided, on the ground that the barrister was wrong in not amending, and indeed, as the real qualification of the voter had never appeared in any of the published lists, and as he had not made any claim, opportunity had not been given for questioning the qualification, nor can it be said that the barrister's decision was wrong; so that the committee must have considered the fault to have been with the overseer, for whose neglect the voter ought not to suffer, if with the objector before them he was able to prove his qualification."

Want of Qualification, &c.] When it has been proved to the committee that objections were raised to the voter at the revision, and that the barrister expressly decided either to retain, insert, omit, or

expunge, such name; the parties may then go into evidence, either to attack the right of the voter, if he is on the register, or to establish his title if he has been rejected.

These objections are various, either that the qualification is of insufficient value, or that there has not been a *bonâ fide* occupation, &c.

It would be beyond the scope of the present work, which does not profess to deal with the registration of electors, to enter upon the consideration of the qualification necessary for voters (a).

Same Objections as made at Revision.] Whether a committee has any power to hear other objections against the title of a voter to be upon the register, than those which were decided upon by the revising barrister, has been ruled differently by committees.

The recent statutes (b) have not in any degree removed the difficulty. The committee are empowered now to decide upon the *right to vote* of any person, in case the barrister has by express decision either retained, or inserted, or expunged, or omitted the name of such person.

In the 1st *Harwich case*, 1851, Minutes, 148, the committee *resolved*, "that in cases where an express decision on a vote has been made by the revising barrister, the committee will inquire into, and decide upon, the *right to vote generally*." There is certainly nothing in the language of the recent statutes to

(a) This subject is treated so largely in many able works on the subject, that it seems needless to go into it here.

(b) 6 Vict. c. 18, s. 98 (England), and 13 & 14 Vict. c. 69, s. 104 (Ireland).

restrict them to the objections decided upon by the revising barrister. 1 P. R. & D. 309.

In many cases the committee have considered themselves to be a Court of Appeal from the decision of the barrister, and have refused to hear any objections that were not taken before him (a).

This was embodied in the resolution of the *Monmouth committee*, K. & O. 412, "that this committee before hearing any objection in the nature of an appeal, from the decision of the revising barrister, will require the ground of the objection *bond fide* made and insisted on to be proved, and the evidence *confined to those grounds*; but that they will not restrict the evidence of either party to that before the revising barrister." In the *Reading case*, F. & F. 555 (1838), the committee came to a similar resolution.

The *Wigan committee*, Bar. & Aust. 211, (1842), refused to hear an objection to a voter which had not been taken on the revision of the lists; they also decided in the case of a claim, which had not been objected to on the grounds urged before the committee, "That this committee will not allow any vote to be questioned on any objection that might have been taken, and was not taken before the revising barrister."

In the *Lyme Regis*, Bar. & Aust. 499, (1842), the committee came to a similar resolution.

Same Evidence.] Some committees have required that the evidence shall be confined to the witnesses examined before the revising barrister. This has not been the general practice of committees, and is not a course that seems to be at all defensible.

(a) C. & R. 294—323—324; K. & O. 42; ib. 32.

The barrister who revises the lists has no power to enforce the attendance of witnesses, and if he had such power, as the witnesses who attended before him might be dead, or unable to attend at the trial before the committee, it would be most unreasonable that the parties should be prevented from calling other witnesses. *Monmouth*, K. & O. 418; *Reading*, F. & F. 555.

In the 1st *Harwich*, 1851, *Minutes*, p. 207, a voter had been objected to before the barrister; no witness was there called in support of the objection, and only one witness was examined in favour of the right to be on the register, several witnesses were examined on both sides before the committee.

In Scotland.] The mode of preparing the register in *burghs* is now governed by the 19 & 20 Vict. c. 58, and as has been already pointed out, the register is conclusive evidence of the continuance of the qualification. That act however does not contain any provisions with regard to the power of committees to inquire whether the sheriff came to a right decision, or whether the name was properly inserted in the burgh register. And with regard to county elections the question still depends upon the construction of the Reform Act, 2 & 3 Wm. 4, c. 65. The only cases of scrutiny from Scotland since the year 1832, have been in the case of counties.

In the first case that occurred, the *Linlithgow*, P. & K. 280, the committee resolved, in *Ritchie's case*, page 296, that as the voter who had tendered his vote at the election had neglected to appeal to the Court of Appeal when the sheriff had rejected his claim, they

would not allow his case to be gone into. In another case, *Rennie's*, page 299, the voter was on the register, and as he had not been objected to before the sheriff the committee would not permit his vote to be objected to. In another case, *Tait's*, page 300, the voter, though not objected to before the sheriff, was rejected by him as he had not made out a *prima facie* case on his claim; the voter afterwards appealed to the Court of appeal, who reversed the judgment of the sheriff and put him on the register: the committee determined that this case could not be gone into.

It is impossible to extract any principle out of these decisions, unless it be that in all cases the register is final in Scotland, which is directly at variance with the language of the Scotch Reform Act.

In England the right of the voter may be gone into by the committee, if the revising barrister has given an express decision upon it. In Scotland, as appears from the clauses of the Reform Act, the sheriff gives a decision in every case, whether any one objects to the voter or not. The manner of giving that judgment by writing the words "admit," or "reject," is the same whether the claimant is objected to or not; and these are indifferently spoken of in sect. 23, as the sheriff's *judgments*, *granting* or *refusing* registration; and such judgments, as well as those of the Court of appeal, may be questioned before a committee of the House of Commons; section 25.

In *Ritchie's case*, p. 296, the committee seem to have thought the *appeal* was necessary to give them jurisdiction to enter on the vote. In *Tait's case*, though there had been an appeal and an express judgment of

the Court of appeal, the committee refused to enter on the vote because there had been no objection before the sheriff.

The question of opening the register, was raised again in the *Invernesshire case*, K. & O. 805. The voter had been inrolled in 1832, at that time he was objected to and rejected by the sheriff, but was afterwards admitted by the Court of appeal, his name remained on the register unobjected to for two years, up to the time of election in 1834, the committee refused to enter upon the case.

In like manner the *Peeblesshire committee*, 1848, *Minutes*, 24 Feb. (a), refused to inquire into the right of persons to vote, who had not been objected to at the last revision before the sheriff. A voter of the name of W. Scott was objected to as having a fictitious qualification. He had never been objected to, either when his name was first placed on the register, or in any subsequent year. The committee *resolved*, "that the vote of W. Scott being on the former registers, and not having been objected to before the sheriff at the registration of 1846, which was in force at the time of the last election, and not having, therefore, been judicially decided upon by the said sheriff, it is not competent for the committee to enter upon the question of his qualification to be on the register of voters."

The counsel for the petitioner then stated that he had cases to bring forward of voters, whose names had

(a) The Minutes in this case were not printed. The decision is cited from the original Minutes in the House of Commons. The arguments are reported in the *Times*, 24th and 25th Feb. 1848.

been objected to before the sheriff, but not at the registration of 1846.

The chairman said, the principle laid down by the committee prevented their going into such cases, the terms of the resolution being strictly confined to the registration of 1846, which was in force at the time of the last election.

These cases of *Invernesshire* and *Peeblesshire*, seem to be in accordance with the principle adopted with regard to English cases. But, it must be observed, that in England the register is renewed each year; in *boroughs* fresh lists are made out, and every person on the lists may be objected to; in counties, though the new register is formed in great measure by reprinting the old, any person may be objected to though he is on the former register, and though unobjected to, if he has parted with his qualification before the 31st of July, his vote may be questioned before the committee. But in Scotland it is very doubtful whether the sheriff has any power to remove from the register of a county, the name of any person who has *once been placed on it*, unless such person has parted with his qualification after having been registered.

By sect. 22, the sheriff is authorized to correct *any mistake* or *omission* which may be pointed out or discovered in the registers, in the name, residence or condition of any person already registered or otherwise.

This enactment does not seem to give the sheriff any power to re-open the question, whether the person had any title originally to be upon the register; but only to make the entry more perfect, by removing any

error as to the name or condition of the voter, or description of his residence. It is true that the same section, 22nd, requires that notice shall be given to parties "*to object to the title of any person already on the register,*" and the sheriff, it would appear (though the section is rather confused) is authorized to decide on such objections. Many, if not the majority, of the sheriffs however, have refused to entertain any objection *to any person on the register*, except on account of matters which have arisen *subsequently* to his being placed on the register. So that if a person altogether unqualified were once on the register, his name must remain there, unless a committee of the House of Commons have power to inquire into his title.

CHAPTER XI.

EVIDENCE.

1. *Committee bound by Rules of Evidence.*
2. *Who may be witnesses.*
3. *Of Examining Witnesses.*
4. *Evidence confined to Matters in issue.*
5. *Party objecting must prove his Case.*
6. *Best Evidence to be given.*
7. *On Secondary Evidence.*
8. *Notice to Produce.*
9. *Hearsay not Evidence.*
10. *Proof of Poll-book,—English, Irish, Scotch.*
11. *Proof of Tender at the Election.*
12. *Proof of Registers,—English, Irish, Scotch.*
13. *Proof of Objections, &c., at the Revision of the Lists.*

1. *Rules of Evidence same as in Courts of Law.*] The select committee, to which an election petition is referred, is a judicial tribunal, and ought therefore to be bound by the established rules of evidence (a). It

(a) In former times committees were seldom guided by any certain rules in dealing with points of evidence, in modern times, however, committees have acted in a less arbitrary manner, and have endeavoured to be guided by the strict rules of evidence. It has therefore been deemed advisable to omit the conflicting decisions contained in older works on Election Law.

is not proposed to enter at large in this work, into the question of what is legal evidence, as that can be much better ascertained by referring to the treatises on that subject; but merely to point out some of the leading rules of evidence, and the mode of proving those matters, which belong peculiarly to election practice. The mode of summoning witnesses to appear before committees has been already described in the Chapter on PRACTICE.

2. *Who may be Witnesses.*] The recent changes in the Law of Evidence have entirely removed all those questions that used formerly to be raised concerning the competency of witnesses.

By the 6 & 7 Vict. c. 85, "*An Act for improving the Law of Evidence*," it was enacted, "That no person offered as a witness shall hereafter be excluded by reason of incapacity from *crime*, or *interest*, from giving evidence either in person or by deposition, according to the practice of any Court on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or *proceeding* in any Court, or before any Judge.

Proviso.—It was, however, provided that this act should not render competent any party to any suit, action or *proceeding*, individually named in the record, &c., or the husband or wife of such persons.

The 11 & 12 Vict. c. 98, s. 83, empowered the committee "to examine any person who has subscribed the petition which such select committee are appointed to try, *unless it otherwise appear* to such committee that such person is an *interested witness*."

In the *Bowdley* case, 1848, Minutes, 314, much discussion took place as to whether a person who had entered into the recognizances could be examined as a witness. See *Ipswich*, K. & O. 389; *St. Alban's*, 1851, Minutes, 59; 2nd *Cheltenham*, 1848, Printed Minutes, p. 2.

By the recent statute 14 & 15 Vict. c. 99, "*An Act to amend the Law of Evidence*," all these questions will be obviated in future. The first section of this act repeals the proviso in sect. 1 of 6 & 7 Vict. c. 85; and it is enacted by the second section, "on the trial of any issue joined, or of any *matter or question*, or on any inquiry arising in any suit, action or other proceeding in any Court of justice, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action or other proceeding may be brought or defended, shall (except as is hereinafter excepted) be competent and compellable to give evidence, either *visâ voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action or other proceeding."

3rd section. "But nothing herein contained shall render any person, who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or com-

pellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband."

The 16 & 17 Vict. c. 83, further amends the law, and provides that husbands and wives, except in criminal proceedings and in proceedings in consequence of adultery, shall be competent and compellable to give evidence; but that no husband or wife shall be compellable to disclose any communication made by the one to the other during the marriage.

Petitioners may be examined.] The effect of these enactments will be, to make any person signing the petition, although he may appear otherwise to be interested a competent witness. In like manner the competency of the sureties for the petitioner, to be examined as witnesses, cannot be questioned.

Voters in support of their votes.] Though a voter was not a party named on the record, it was the general practice to consider him while his vote was under consideration as a party to the suit, and therefore an incompetent witness. The practice was by no means uniform on this subject. It is clear, however, that now no objection can be raised against the examination of a voter under such circumstances.

Candidates and Sitting Members.] Since the passing of 14 & 15 Vict. c. 69, it has been the constant practice, with one exception (a), to allow candidates and sitting members to be examined. In almost every case of a controverted election during the session of 1853, the sitting members, or the candidates recrimi-

(a) *Barnstaple*, 1855, 2 P. R. & D. 337.

nated upon, were called to disprove the acts of bribery and corruption imputed to them. In one case in that year, *Dartmouth*, 2 P. R. & D. 154, the petitioners proposed to examine Sir T. H., the sitting member, in support of their case. This was objected to by his counsel on the ground that an election committee was not within the scope of the 14 & 15 Vict. c. 99. And that if the statute did apply the committee had a discretion in the matter. It was answered that the committee had no discretion, and that it was impossible for the Legislature to have used more comprehensive words than appear in the statute. The committee decided, "That the sitting member being admissible as a witness, the petitioners cannot be denied the right to examine him."

It seems impossible to contend that the trial of an election petition is not "a proceeding before persons having by law authority to hear, receive and examine evidence."

In the *Barnstaple case*, 1855, the petition contained a charge that Mr. L., the sitting member had procured his election and return by means of a corrupt and illegal agreement. The counsel for the petitioner proposed to call Mr. L. as a witness, with reference to this alleged corrupt transaction. To this his counsel objected, on the ground that the charge, if established, would amount to a criminal offence, and that therefore the inquiry before the committee as to this matter was "a criminal proceeding." The committee after hearing the point fully argued, resolved, "That upon the distinct head of the petition now under consideration, namely, whether the said Mr. L. procured his election and return by means of a corrupt bargain or

agreement, as alleged therein, he is not compellable to give evidence."

The committee in coming to the resolution that they would not allow Mr. L. to be sworn as a witness, must have agreed with the argument of his counsel that this was a "criminal proceeding."

It is not enough that the person said to be incompetent, should be charged with the commission of an indictable offence, or an offence punishable on summary conviction, but he must be so charged in a "*criminal proceeding*." Now in what sense can an inquiry before an election committee be called a criminal proceeding? It is not instituted by the Crown, or on behalf of the Crown (a). The consequences of a verdict of guilty to the party accused are neither fine nor imprisonment, nor the imposition of a pecuniary penalty. It certainly appears that it might be contended with equal force that a defendant in an action of libel or assault, was not competent or compellable to give evidence, because the offences with which he was charged in these civil actions were in themselves indictable. That this is not so, was decided expressly in the case of *Boyle v. Wiseman* (b), when the Court of Exchequer held that a defendant, who was subpoenaed as a witness, could not object to be sworn, on the ground that the only relevant questions which could be put to him, were such as would

(a) In the case of *Attorney General v. Radloff*, the Court of Exchequer were equally divided as to whether an information for the recovery of penalties for smuggling filed by the Attorney General, was a criminal proceeding. 10 Ex. 84. See as to this 17 & 18 Vict. c. 122, s. 15.

(b) 10 Exchequer, 647.

tend to criminate himself, but that the opposite party had a right to insist upon his being sworn and examined, and then the defendant might, if he thought fit, claim his privilege not to answer any question that might tend to criminate him.

In the *Barnstable case*, had Mr. L. been sworn, as it is submitted he ought to have been, he would not have been "compellable to answer any question tending to criminate himself."

3. *Examining Witnesses.*] It is a general rule that the parties who call a witness are not entitled to ask leading questions, that is to say, questions that suggest the answer sought for. This rule applies only to the examination upon points material to the issue; and not to introductory matters, or points not disputed between the parties. There is however an allowed exception to this rule, when the witness appears to be hostile to those who call him. Under such circumstances Courts of law allow leading questions to be put, and will permit, in their discretion, the examination to assume the form of a cross-examination.

In election inquiries, where the majority of the witnesses are in general hostile, and are called from the ranks of the opposite side, it is necessary that some latitude should be allowed in the examination of the witnesses. This is a matter always in the discretion of the committee, to be determined by the conduct of the witness while under examination.

Attacking Credit of Witness.] Those who put a witness into the box are not allowed to discredit him. Having presented him as a person deserving of credit, they may not afterwards turn round and attempt to

destroy his credibility. *Buller's N. P.* 297. For this would enable them to destroy the credit of their witness, if he spoke against them, and to make him a good witness if he spoke in their favour.

Should the witness, however, give a different account of a transaction from that which the party calling him expected him to give, other witnesses may be called to shew a different state of facts, even though the effect of that evidence should be to shew that the first witness was unworthy of credit.

An important matter will have now to be determined by election committees, *viz.*, do the sections from 19 to 32, inclusive of the "Common Law Procedure Act, 1854," apply to inquiries before them. The 103rd section of that act declares that the enactments in the sections, 19 to 32 inclusive, shall apply and extend to "*every Court of civil judicature.*" If this be resolved in the affirmative, the rules there contained as to discrediting a witness by proving that he has made statements inconsistent with his evidence will be applicable to election inquiries. And witnesses may then be cross-examined as to previous statements made by them in writing without shewing the writing to the witness (a).

(a) 17 & 18 Vict. c. 125, s. 19. Proof of a previous conviction of a witness may be given (sect. 25). Attesting witnesses need not be called, except when attestation is requisite for the validity of the document (sect. 26). Proof in cases of disputed handwriting (sect. 27). Documents may be stamped at the trial (sect. 28). Some of the provisions contained in these sections are no doubt inapplicable to election inquiries, but those here specified are as much adapted to election inquiries as to the trial of appeals before Courts of quarter sessions, which Courts have, it is believed, in general, considered themselves Courts of civil judicature."

It is always open to the party cross-examining a witness to ask questions tending to impeach his veracity. A witness may always refuse to answer any question which, in his opinion, may tend to criminate himself. It is not uncommon for the witness to be cautioned by the chairman that he need not answer such questions. *Sudbury*, Bar. & Aust. 250; *Southampton*, Bar. & Aust. 383 (a). It is only where the question tends to criminate the witness that it is usual to caution him. Such a caution ought not to come from the counsel in the case; the protection is that of the witness, not of the party calling him. In the *2nd Lancaster case*, 1848, Minutes, where several voters were called against their right to vote, they were told they might object to any questions that they thought would affect their right to vote. This is a very unusual course, and, it is submitted, an incorrect one.

Cross-examination.] It is a general rule that whenever a witness has been sworn, though merely for the purpose of formal proof, the opposite side have a right to cross-examine him generally. *Phillipps on Evidence*, 908; *Morgan v. Brydges*, 2 Stark. N. P. C. 314; *Rex v. Brooke*, *ibid.* 472.

A witness, who merely produces documents on a *subpœna duces tecum*, need not be sworn if the party who calls him does not wish to examine him, and then there can be no right for the other side to cross-examine him. *Davis v. Dale*, M. & M. 514; *Perry*

(a) In the *Harwich case*, 2 P. R. & D. 226, the committee directed the counsel not to interfere when he was objecting that an answer might criminate the witness, who was the sitting member.

v. *Gibson*, 1 Ad. & Ell. 48; *Summers v. Moseley*, 2 Cr. & Mee. 477; *Taylor on Evidence*, 1112.

If a witness so called should be sworn unnecessarily, and by mistake, the other side will have a right to cross-examine him. *Rush v. Smith*, 1 C., M. & R. 94.

Though these rules are well established in the Courts of law, the practice of election committees has not been always in accordance with them. In one case, where overseers attended to produce notices of claims, the committee decided that it was necessary to swear the overseers. *New Sarum*, P. & K. 246. In a more recent case, however, a witness was called to produce documents, in accordance with the Speaker's warrant served upon him; a discussion then took place as to the sufficiency of the notice to produce; the committee having decided that the notice was sufficiently specific, the witness was asked for the documents *without having been sworn*. The witness having stated that he had not got the documents, an application was then made to the committee that they should take further steps with regard to the witness. This the committee refused to do, "unless the petitioners chose to make him a witness in the regular way, by having him sworn." *Bewdley*, 1848, Minutes, p. 116. The committee in this case seem to have recognised the rule, that a person may be called upon to produce documents without being sworn. It may be doubtful whether they had any power to report the conduct of this person to the House before he was sworn as a witness. (See sect. 83 of 11 & 12 Vict. c. 98.) He had not misbehaved as a witness, and until he was examined on oath they could not know whether he had disobeyed the warrant of the Speaker

for he might have parted with the documents before he was served with the warrant.

In some cases committees refuse to allow a witness, though sworn, to be cross-examined on any other matters besides those which he is called to prove (a).

When not allowed to be cross-examined.] When a witness has been called merely to produce the poll books, or other formal documents, the committee will not allow him to be then cross-examined generally as to the conduct of the election.

In the *Ipswich case*, K. & O. 339, the counsel for the sitting member proposed to cross-examine the returning officer, who had produced the poll, as to the conduct of the election; this was objected to, and the committee resolved, "That they cannot allow the cross-examination of the returning officer *in this stage of the business*, such returning officer having been called by the petitioners simply to establish the authenticity of the poll-books, which has been done." And see *Roxburgh*, F. & F. 470. In the *Weymouth case*, Bar. & Aust. 106, the committee resolved, "That the witness, having been examined merely to prove the authenticity of the poll-books, the counsel for the sitting members should confine their cross-examination to that point."

A similar resolution was come to in the *Blackburn case*, Bar. & Aust. 321, the petitioner in this case undertaking to recall the witness, and the sitting

(a) For the reason given at the commencement of this Chapter it has been considered advisable not to embarrass the reader with the consideration of a multitude of conflicting decisions, which were come to when committees acted in an arbitrary manner.

member undertaking to pay his expenses." And see note to this case, Bar. & Aust. 322, *acc. North Cheshire*, 1848, Minutes, p. 3.

Mode of cross-examining.] Although leading questions may be put to a witness on his cross-examination, this does not sanction the putting of a question, which assumes that facts have been proved which have not been proved, or that particular answers have been given contrary to the fact. *Stark. Ev.* 188. Nor is it right for the counsel to put the very words into the witness's mouth, which he is to echo back again. *B. v. Hardy*, 24 St. Tr. 659-725; and see *Taylor on Evid.* 1115, where it is observed by the learned author, "There surely must be some restriction, where the witness betrays a vehement desire to serve the cross-examining party."

4. *Evidence confined to Matters in issue.*] Neither in the examination in chief, nor in cross-examination, will parties be allowed to examine a witness to other matters than those which are material to the point in issue before the committee. It is sometimes necessary, in the cross-examination of a witness, to travel into matters, the relevancy of which may not in the first instance be apparent. This often is the case where it is sought to attack the credit of a witness.

Petitioners have been allowed to prove, in the course of their case, the abduction of witnesses; this, though not directly material, is often necessary to enable the committee to take steps to procure the attendance of the witnesses, and may sometimes throw light upon the question of agency. This was done in the *Leicester case*, 1848, Minutes, p. 92, and in the *St. Alban's*

case, 1851, Minutes; see 2nd Cheltenham, 1 P. R. & D. 230, *contra*.

It has been observed before (a) that the committee usually, at the commencement of their proceedings, come to certain preliminary resolutions, one of which is, in general, that counsel will not be allowed to go into matters not referred to in their opening statement without a special application to the committee for permission to do so. In the *Southampton case*, Bar. & Aust. 400, the counsel for the petitioners applied to the committee for leave to proceed with a case of bribery, the circumstances of which had not come to their knowledge until after the opening speech. The committee refused the application, and said, "This was not a case falling within that reservation which was confined to cases transpiring in the course of the examination of witnesses, or in the words of the resolution, 'to cases, the knowledge of which has been brought out before the committee in the progress of the investigation.' "

5. *Objections must be proved by the party making them.*] A voter had been registered for a house and iron foundry; it was admitted that the voter had parted with the house subsequent to the registration, but that he retained the foundry at the time of the election; the only question raised was, on whom lay the burden of proving the value of the remaining part of the qualification. It was *resolved*, "that the party impugning the vote shall prove the insufficiency of the value." And see *Evesham*, F. & F. 533.

(a) "Practice."

But in another case, *Part's case*, *Wigan*, Bar. & Aust. 163, where the voter had been registered in respect of two different qualifications, and the entry on the poll-book had been made in such a manner as to render it *ambiguous* in respect of which of the qualifications he had voted, it being admitted by the party defending the vote that one of the qualifications was bad, the committee decided that it lay upon those defending the vote to shew that the voter was qualified to vote for the other premises for which he was registered.

In charges of *personation*, they who make the objection must *disprove* the identity of the voter with the person on the poll. *Southampton*, P. & K. 221. So also where want of qualification is alleged against the sitting member, the petitioners are bound to prove the *negative*. *Dover*, P. & K. 418 ; *Tavistock*, 2 P. R. & D. 10.

6. *Best Evidence to be given.*] It is a general rule (a) that the best, or rather the highest kind of evidence that the nature of the case admits of, must be given. Therefore, when anything has been reduced to writing by the parties, the writing is in general the best evidence of it, and must be produced. But it is not in every case necessary, where the matter to be proved has been committed to writing, that the writing should be produced. If, for instance, the narrative of an extrinsic fact has been committed to writing, it may yet be proved by parol evidence. Upon this principle, a receipt for money will not exclude parol evidence of the payment. *Rambert v. Coken*, 4 Esp.

(a) Roscoe on Evidence, 1 ; Taylor on Evidence, 340.

213. The fact of tenancy, though there is a lease, may be proved by parol; but the parties to the contract, the amount of rent, and terms of the tenancy, can only be shewn by production of the lease. *R. v. Inhab. of Holy Trinity*, 7 B. & C. 611.

A witness cannot be asked whether certain resolutions were published in the newspapers, neither can he be questioned as to the contents of his account books; but in both these cases the papers and the books, as being the best evidence, must be produced (a).

Inscriptions on flags, banners, and placards, paraded in public, and the contents of *resolutions* read at public meetings, may be proved by *oral testimony*. *R. v. Hunt*, 3 B. & Ald. 556 (b).

Printed copies struck off in one common impression, though they are themselves only secondary evidence of the contents of the document from which they were printed, are *primary* evidence, each of them of the contents of the others. *R. v. Watson*, 32 St. Tri. 82, 86.

Whenever, therefore, a printed notice or paper has been distributed at an election, any printed copy, struck off at the same time, will be primary evidence. See *Wakefield*, Bar. & Aust. 307, where notice of disqualification, which had been given to the electors in a printed hand-bill, was proved by the production of another printed copy.

If it is sought to affect the party by means of the contents of a written document, the original writing must be produced; a printed copy will not be admissible until the manuscript is accounted for. *R. v.*

(a) Taylor on Evidence, 355.

(b) Ibid. 360.

Watson, 2 Stark. 129. Duplicate writings, taken from an autograph by means of a copying machine, are only *secondary* evidence. *Nodin v. Murray*, 3 Camp. 228.

7. *Secondary Evidence.*] Whenever the absence of the primary evidence is satisfactorily accounted for, secondary evidence may be given. This may be when the loss or destruction of the better class of evidence has been proved, or when the evidence is in the possession of the adverse party, and they upon notice given them to produce, refuse to do so (*a*). Secondary evidence is also admissible when a document is in the hands of a *third party*, who is not *compellable by law* to produce it, and who refuses to do so, either when summoned as a witness with a *subpœna duces tecum*, or when sworn as a witness without such *subpœna*, if he admits that he has the document in Court. *Marston v. Downes*, 1 A. & E. 31; *Doe v. Clifford*, 2 C. & K. 448 (*b*). The reason of this rule is the same as that which admits parol proof, when the adversary, after notice, refuses to produce a deed in his possession, namely, that the party offering secondary evidence has done all in his power to obtain the original document (*c*).

Whenever secondary evidence is admissible, whether of documents or of oral testimony, it is a rule that

(*a*) Roscoe on Evidence, 2.

(*b*) Taylor on Evidence, 390. The witness must be *justified* in refusing the production, for otherwise the party will have no remedy except as against him. *Reg. v. Llan-faethly*, 2 E. & B. 940.

(*c*) Taylor on Evidence, 390.

there are no degrees in the various kinds of such evidence (a). If, therefore, a deed be lost, or be in the hands of the adversary, who, after due notice, refuses to produce it, the party seeking to give evidence of its contents, may at once have recourse to parol testimony, though it be proved that he has in his possession a counterpart, a copy, or an abstract of the document. *Doe v. Ross*, 7 M. & W. 102. This rule applies merely to the legal *admissibility* of the evidence, so as not to throw upon parties the necessity of accounting for the absence of those classes of secondary evidence, which are of higher value in point of credibility, before the inferior evidence is given. If it were apparent, that there existed the copy of an instrument in the possession of the party, the non-production of such a copy, would naturally create distrust in the verbal testimony with regard to the contents of the instrument (b).

A notice to produce is not required, where the instrument to be proved is itself a notice; such as a notice to produce, or notice to quit. *Taylor on Ev.* 385. In the *Wakefield case*, Bar. & Aust. 307, a printed notice of the disqualification of the member had been served on a voter at the election; no notice to produce this had been given, but another printed copy of the notice was received in evidence.

8. *Notice to produce.*] When it is sought to give evidence of the contents of writings or documents in the possession of the opposite party, notice to produce

(a) *Taylor on Evidence*, 437; *Doe v. Ross*, 7 M. & W. 102.

(b) *Taylor on Evidence*, 437, 438.

them must be given, and on their failing to produce them secondary evidence is admissible. Before the party, upon whom the notice has been served, can be called upon to produce the documents asked for, it must be shewn that they are in his hands. *Sharpe v. Lamb*, 11 A. & E. 805. When the writings have been once traced into the possession of the opposite party, it lies upon him to shew that they are no longer in his hands. *R. v. Thistlewood*, 33 St. Tr. 757; and see *Taylor on Ev.* 378. "It would seem, that where a party has notice to produce a particular instrument traced to his possession, he cannot object to parol evidence of its contents, on the ground that, previous to the notice, he had ceased to have any control over it, unless he has stated this fact to the opposite party, and has pointed out to him the person to whom he delivered it: neither can he escape the effect of the notice, by afterwards voluntarily parting with the instrument, which it directs him to produce." *Taylor on Ev.* 379.

In cases of Scrutiny.] The voter is considered to be in some sense a party to the inquiry; he should, therefore, be served with a notice to produce any writings in his possession; or he might, now, be served with a *subpœna duces tecum*, if it was intended to call him as a witness.

Form of Notice, &c.] A notice to produce, in cases before the Courts of law, may be either verbal, or in writing (a); it has, however, been decided by one election committee, that a notice to produce *must* be in writing. *Gloucestershire*, 105, cited in *Orme on*

(a) *Taylor on Evidence*, 380.

Elections, 474, and in *Rogers on Committees*, 175, where a doubt is expressed as to the correctness of the decision.

In this case, parol evidence was offered of a deed, which was objected to, as notice had not been given in writing to the witness, in whose custody it was to produce it. It was answered, that the witness owned he had a *verbal notice*, which was as good as one in writing. But the committee resolved *nem. con.*, "that the witness be not permitted to give parol evidence of the deed, as notice had not been given *in writing* to produce it." Yet, in the same case, *Gloucestershire*, 112, where a witness had his father-in-law's will in his pocket, which he refused to produce, though he offered to give parol evidence of its contents, it was moved and carried, "that *J. Lucas*, trustee of the will of *W. R.* which will he refuses to produce, be examined as to its contents." *Orme on Elect.* 474.

The notice may be in very general terms; all that is required is, that the party should be induced by the notice to believe, that particular writings, &c., will be called for. In *Rogers v. Custance*, 2 M. & Rob. 179, a notice to produce "all accounts relating to the matters in question in this cause," was held to be sufficient to entitle those giving the notice, to call for particular accounts. *Jones v. Edwards*, 1 M'Cl. & G. 139; and see *Jacob v. Lee*, 2 M. & Rob. 33.

Notices in general terms have been held by committees to be sufficient to entitle the party giving the notice to call for documents. *Youghall*, F. & F. 388, where a notice to produce "all public books, documents, and *records*," was held to be sufficient to allow the charter of the borough to be called for.

In the *Bewdley case*, 1848, *Minutes*, 115, an agent had been served with a warrant to produce "all papers and accounts connected with the election." Under this notice a bill, for printing notices and circulars, which had been traced into the possession of the agent, was called for; it was objected that the notice was too general, and did not direct particular attention to the precise documents wanted: the committee decided that the notice was sufficiently specific. See also *Bodmin*, 1 P. R. & D. 131.

The notice may be directed either to the party, or to his attorney: and may be served on either. *Cates v. Winter*, 3 T. R. 806; *Hughes v. Budd*, 8 Dowl. 315; *Houseman v. Roberts*, 5 C. & P. 394. Where the attorney has been changed, notice served on the first attorney will suffice. *Doe v. Martin*, 1 M. & Rob. 242.

When notice has been served on a voter to produce his deeds, it is not necessary, in a case of *scrutiny*, that notice should also have been served on the agent of the sitting members. *Fowey*, 1 Peck. 524.

Service of Notice.] It is sufficient to leave the notice with a servant of the party at his dwelling-house, or with a clerk at the attorney's office. *Evans v. Sweet*, Ry. & Moo. 84; *Taylor on Evidence*, 380. In the *Galway County case*, P. & K. 522, notice to produce a lease had been served at the house of the voter upon his son, the voter being absent. No proof was adduced of the voter's having returned home. The committee considered the service insufficient. In the *Monaghan*, K. & O. 30, the committee held, that service of a notice to produce on the wife of the voter at his house was insufficient. *Sed quare*.

In the *Carlow County case*, K. & O. 466, 467, the committee held the service at the house of the voter, upon the brother of the voter, to be sufficient; and also service at the house, upon a woman who had charge of the house, during the absence of the wife, and who informed the wife of the service, to be sufficient. There does not seem to be any reason why committees should require other proof of service than what is sufficient to satisfy the Courts of law.

Time of Service.] The notice should be served in such time, as to enable the party, under the circumstances of the case, to comply with the call. The committee must decide whether, under the circumstances of the case, such notice has been duly given. See *Taylor on Evidence*, 382.

In some cases committees have held that notices to produce, served after the commencement of the inquiry, are too late. *Petrie's Cricklade case*, 528; *Fowey*, 1 Peck. 523.

It has, however, been held in a Court of law, that if a party is served with notice sufficiently early to enable him to produce the document, it makes no difference that, at the time of the service, *the cause is part heard*. *Sturm v. Jeffree*, 2 C. & Kir. 442; see also *Taylor on Ev.* 383.

In the *Galway case*, P. & K. 521, service on the day before the ballot for the committee, was held to be sufficient.

In the *Carlow County*, K. & O. 266, the committee was appointed on the 28th of July. Service on the 28th of July, when the deed was called for on the 30th of the same month, was held to be insufficient. And a notice served on the 1st of August to produce

on the 3rd of the same month, was held to be insufficient. Service on the day on which the committee was ballotted for, has been held to be sufficient. *Youghall*, F. & F. 388.

Probably, a committee now would decide that the notice had been served in sufficient time, whenever there had been, under the circumstances of the case, sufficient opportunity for the party to obtain the documents called for.

9. *Hearsay is not Evidence.*] All the evidence received in a Court of justice ought to be taken upon oath. Mr. Justice *Buller*, in his work on *Nisi Prius*, 294, says, "If the first speech were without oath, another oath that there was such speech, makes it no more than a mere speaking, and so of no value in a Court of justice."

Obvious as is the principle of this rule, there is not unfrequently some little difficulty in the application of it.

Evidence is open to the objection of being hearsay, when it is given for the purpose of establishing *the truth* of the statement which has been heard. When a witness says, I heard such a statement made, not for the purpose of shewing that the matter stated was true, but in order to fix either the time when, or the person by whom, the statement was made, it is not open to the objection of being hearsay. It is often important that several witnesses should speak to what was said on some occasion, not to prove that what was said ~~was~~ true, but to shew, from their giving the same account, that they are speaking of the same transaction.

In consequence of the change, introduced by the

4 & 5 Vict. c. 57, in the order of proof in cases of bribery, an apparent exception has been created to the rule that hearsay is not evidence. For now, the acts and declarations of persons, not being parties to the suit, may be received in evidence against the parties, before that agency is proved which would be necessary, but for the act, to make such declarations evidence. This has been already adverted to in the Chapter on CORRUPT PRACTICES, *ante*, p. 185.

The intention of this statute, it is submitted, was only so far to change the law in this respect, as to permit declarations of persons to be given in evidence, *on the condition* that such persons should afterwards be proved to be the agents of the candidates. If that condition is not fulfilled, the evidence is worthless, and ought not to be considered.

The statements of voters in *cases of scrutiny*, are not open to objection as being hearsay, as they are looked upon *then* as parties to the suit. In the *Ipswich case*, K. & O. 887, the committee resolved, "That evidence of declarations of voters, in the admission of bribery, whether before, during, or after the election, is admissible." But this resolution was come to in a case of scrutiny.

Proof of Birth, Marriage, &c.] The same evidence which is sufficient to establish the proof of births, marriages and deaths before other tribunals ought to be considered satisfactory by a committee. It is better therefore to refer to works like *Roscoe on Evidence* and *Taylor on Evidence* than to cite the decisions of committees on these subjects, which have not always been in accordance with legal principles (a).

(a) In Courts of law marriage may be proved by *reputation*, except on indictments for bigamy and actions for *crim.*

The mode also of proving deeds, writings, and documents, whether public or private, may be better ascertained by reference to the decisions of the Courts of law upon this subject. It is proposed therefore to refer only to the mode of proving those matters which are more exclusively within the cognizance of election committees.

10. *Proof of Poll-books.*] In consequence of the difficulties attending the proof of the custody, and authenticity of the poll-books, on inquiries before election committees, provision has been made by recent statutes for the more secure custody, and the more easy proof of the poll, both in England and Ireland. In Scotland the proof remains as it was under the Reform Act.

English Poll-books.] Section 93 of 6 Vict. c. 18, provides for the transmission of the poll-books to the clerk of the Crown in Chancery, and this officer is directed by the 95th section to keep and preserve the poll-books and deliver copies if required, and by sect. 96

con., when stricter proof is required. In the *2nd Lancaster case*, 1848, a committee refused to allow a marriage to be proved by the oral testimony of a person who was present at the marriage, and saw the parties married, being under the impression that it was *not the best evidence*. They also decided that a non-parochial register, which was produced by the registrar, was not evidence of the marriage, without calling the parties who signed the register as witnessing the marriage, the committee looking upon these persons as *attesting witnesses*.

In the *Middlesex case*, 2 Peck. 114, the committee required, in proof of marriage, an *attested copy* of the register, although, as is observed by Serjeant Peckwell in a note, no maxim is more clear than that *reputation is primâ facie* evidence, in general, of a marriage.

it is provided, "That the Clerk of the Crown shall, upon receiving a warrant signed by the chairman of any committee of the House of Commons, appointed for the trial of controverted elections, produce by himself or his agent, before such committee, the said several books *so deposited with him as aforesaid*, and *such production shall be sufficient primâ facie proof of the authenticity of the said poll-books.*"

The first case in which the poll-books were produced by the Clerk of the Crown, in accordance with these provisions, was the *Dartmouth*, Bar. & Arn. 460.

Production primâ facie Proof of Authenticity.] When the poll-books are thus produced, it is open to those defending the seat to shew, either on cross-examination or by direct evidence, that the provisions of the 6 Vict. c. 18, s. 93, as to *depositing* the poll-books, have not been complied with. In the *Wigan case*, Bar. & Arn. 790, it was contended for the petitioners that the effect of the enactment was to preclude any inquiry into the circumstances attending the deposit of the poll-books with the Clerk of the Crown. It was answered on the other side, that the production was only *primâ facie* proof of the authenticity of the poll-books if they had been "so deposited;" that is to say, duly deposited under sect. 93. The committee allowed the cross-examination to proceed.

The Clerk of the Crown, producing the poll-books in the session of 1848, was cross-examined in almost every case, as to the circumstances attending the deposit of the books with him;—as to whether the poll-books were delivered to him or were sent by post; and whether he had, by the same post, received the letter mentioned in the 93rd section, from the return-

ing officer. *Lyme Regis*, 1848; *North Cheshire*, 1848; *Leicester*, 1848. 1 P. R. & D.

The practice seems to be now well settled that the poll-books will be received in evidence when produced from the proper custody, although the statutory directions as to sealing and tendering them to the candidates have not been complied with. *2nd Horsham*, 1848, 1 P. R. & D. 248; *ib.* p. 28, 262; *Waterford*, 2 P. R. & D. 86; *Maye*, *ib.* 202. So also when the returning officer has omitted to send a letter describing the poll-books as directed, 6 Vict. c. 18, s. 93. *Barnstaple*, 2 P. R. & D. 206. See also *Kiddermminster*, 1 P. R. & D. 262 (a).

Irish Poll-books.] The 13 & 14 Vict. c. 69, s. 99, is identical with the English enactment, with this exception that Irish poll-books are sent to the Clerk of the Crown and Hanaper in Ireland, and he is the person to produce them before committees.

Scotch Poll-books.] There has been no enactment since the Reform Act (2 & 3 Wm. 4, c. 65), for the safer custody and more ready proof of the poll-books in Scotland.

By the 32nd section of that act, the sheriff in charge of each polling place, and the clerk in attendance at

(a) If it should appear that the provisions of the statute had been so far neglected as to render other proof of their authenticity necessary, the returning officer must be called to identify the poll-books. Were such a case to occur, a committee would probably allow an adjournment to procure the attendance of the returning officer. The petitioner would not be in fault. He would have a right to assume that the returning officer had done his duty, and had duly transmitted the poll-books to the proper officer, according to the directions of the statute.

such place, are directed to *subscribe their names to each page of the poll-book* before making, or allowing to be made, any entry in the succeeding page, and the poll-book, or books, at the close of the first day's polling, are to be publicly sealed up by the acting sheriff and poll-clerk, to be taken charge of by the sheriff; on the commencement of the poll on the second day, the sheriff is to break the seals publicly, and proceed as before; and immediately after the poll, at his polling place, is finally closed, the *officiating sheriff* shall forthwith seal up, and transmit or deliver the said poll-books to the sheriff acting as the returning officer for the shire.

By sect. 33, as to the county elections, it is enacted, "That the sheriff to whom the said poll-books have been transmitted or delivered, is, on the day appointed, to break the seals and declare the state of the poll.

Sect. 34 provides for declaring the result in borough elections, and also with regard to elections in districts, or sets of burghs lying in *different shires*.

The 5 & 6 Wm. 4, c. 78, s. 6, provides, "That where a poll takes place for a district of burghs *situate in different counties*, the poll-books shall, at the final close thereof, be forthwith sealed up, and delivered or transmitted, by the sheriffs or sheriff substitute in charge of the polls, to the sheriff appointed by the Reform Act, to make the return of the member for such district" (a).

It will be seen, therefore, that there is no statutory

(a) In the *Wigton case* (1853), the poll-books were produced by a town-clerk—no objection was taken. *Ante*, 55.

provision for the safe custody of the poll-books after the result of the election has been proclaimed.

The poll-books, in the few Scotch cases that have occurred since the passing of the Reform Act, have been produced by the sheriff clerk of the county. *Invernesshire*, K. & O. 300; *Roxburgh*, F. & F. 470.

In the *Invernesshire case*, the sheriff clerk, who produced the poll-books, had received them from the sheriff at the time that the numbers were declared. Within forty-eight hours after he had received them, he carefully examined them with another person, and had since that time kept them in his inner office locked up in a box, of which he had kept the key; he stated that the poll-books were unmutilated and unaltered. Upon his cross-examination, it appeared that during this time, he had been absent for seven days, during which time his deputy had the key of his box; and that he had given out the poll-books to his clerks, of whom he had four, for the purpose of their being inspected by the agents of the parties. These clerks were not called; but the sheriff stated that he had received the poll-books from the sheriff substitutes, with whose handwriting as well as that of the poll-clerks he was well acquainted, that he had gone through every single page and every single entry in the books to see that they were in consecutive order, before he declared the poll; that he had *made a similar examination* of the books since he had been in London, and was able to declare that they were in the same state as when he delivered them to the sheriff-clerk. The committee resolved "That the poll-books should be received in evidence;" but they, at the same time, expressed their opinion that the poll-books had been

kept in a very careless manner. As to cases where committees have admitted the poll-books, notwithstanding some irregularity with regard to the custody of them, see *Oxford*, P. & K. 101; *Bedford*, P. & K. 116; *Ipswich*, K. & O. 337; *Reading*, Bar. & Aust. 416.

When the poll at a *former election* has to be proved, the Clerk of the Crown must be summoned to produce it. The poll-books of the election of 1847 were produced on the trial of the *1st Cheltenham case*, 1848, and *1st Horsham*, 1848. At the close of the inquiry they were again taken possession of by the clerk of the Crown who produced them, and, they were produced again before the committees which sat upon the second petitions from those two places, by the same officer.

Secondary Evidence of Poll.] If the original poll-books should be lost or destroyed, secondary evidence will be admissible to shew what were the numbers polled for each of the candidates at the election. In the *Longford case*, F. & F. 222, it was admitted that the poll-book was lost; it was then proposed to produce the candidate's books, which had been compared at the end of every night's polling, with the original poll-books; and to put in the check-books kept by the agents of the petitioners. This was objected to on the other side, and it was then agreed that the books on both sides should be compared, and the disputed names agreed upon after the committee had risen. The check-books kept by the agents of the petitioners were then produced.

In the *Cardigan case*, Bar. & Aust. 269 (1842), where some of the poll-books had been lost, the

returning officer, acting on the best information that he could obtain, made a double return. The loss of the poll-books was proved. In order to prove the state of the poll, at the place from which the poll-books were missing, the poll-clerks at the booths were called, who spoke to the number of voters polled for each candidate at their respective booths. On this evidence the committee acted.

In the *Waterford case*, 1 Peck. 240, where the poll-books were not produced, the state of the poll was agreed to by admissions made on each side; the committee being of opinion that where a vote had been admitted to be on the poll by the adverse party, the production of the poll was unnecessary.

It must be remembered that when *secondary* evidence is admissible, there are *no degrees* in the various kinds of such evidence. *Doe v. Ross*, 7 Mee. & W. 102.

Parol evidence to explain.] When the poll-clerk has made a mistake in recording a vote at the election, parol evidence is admissible to shew, that the voter did not in fact vote for the candidate, on whose poll his name appears. See *Bedfordshire*, 1 Luders, 375, 3 Luders, 407. *Reading*, F. & F. 555; and see *ante*, "SCRUTINY," p. 405.

11. *Proof of Tender.*] When a voter has tendered his vote at an election, and the vote has been refused by the returning officer, the fact of the tender will be proved by the production of the poll-book, if the tender has been *entered upon it*, as a tendered vote. *Downton*, 1 Lud. 146; *2nd Fowey*, C. & D. 263; and see 2 Wm. 4, c. 45, s. 59, which directs the returning

officer, or his deputy, to enter upon the poll-book every vote so tendered, distinguishing the same from the votes admitted and allowed at the election; and 6 Vict. c. 18, s. 91, which provides, that where a voter who has been personated, shall tender his vote, the returning officer is to enter the vote, so tendered, upon the poll-book, distinguishing the same from the votes admitted.

If the returning officer, or his deputy, has neglected or refused to record the tender of a vote, the fact of the tender may be proved by parol evidence; either by the voter himself, or by the poll-clerk or others who were present at the time. In the *Southampton case*, P. & K. 226, a witness was called to prove the fact of the vote having been tendered; it was objected, that the poll-book, since the passing of the Reform Act, was the only proper evidence of a tender; the committee overruled the objection, and received the evidence.

So also in *New Sarum case*, P. & K. 262, where the same objection was taken, the committee allowed a witness, who had been present at the time, to prove that the vote had been tendered. See also *Ohisnall's case*, 1st *Harwich*, 1851, Minutes, p. 222, where the tender was proved by parol evidence.

Parol Evidence to Explain.] If, when a vote has been tendered at an election, the poll-clerk has by mistake entered the tender in favour of the wrong candidate, parol evidence is admissible to correct the mistake so made. *Vide ante*, p. 406.

In like manner, if the tender has been entered on the poll-book as a vote tendered, without shewing for whom the vote was tendered, parol evidence is ad-

missible to explain the omission. *Harwick*, 1 Peck 394, and *Rogers on Com.* p. 138.

In the *Droitwich case*, K. & O. 54, a special entry had been made on the poll of the circumstances under which the vote had been refused, *viz.*, "rejected, on account of the voter not answering the third question, by saying he did not know whether he had a house in the parish of St. N.," &c. It was proposed in the course of the inquiry into the vote, to give in evidence what had passed at the time the tender was made. The committee decided that they would allow parol evidence to *explain* and *not to contradict* the poll. In the *Carlton case*, F. & F. 58, the committee refused to permit evidence to be given to *contradict the description* of the voter on the poll-book. The committees in so deciding, must have looked upon the poll-book as in the nature of a *record*. That it clearly is not, and as evidence is admissible to shew that the poll-clerk has entered the vote incorrectly, it seems difficult to understand why evidence may not be given to *contradict* entries on the poll-book, which it is no part of the prescribed duty of the poll-clerk to make.

12. *Proof of Register.*] It has been already observed, that it is necessary, on all election inquiries, to produce and prove the poll-books in the first instance, in order to shew that there has been an election. In cases of scrutiny it is necessary to produce the register that was in force at the time of the election.

In the *Carnarvon case*, P. & K. 459, where it appeared that no register had ever been made, the

committee allowed votes to be struck off on a scrutiny, the lists signed by the barrister being produced before them. So also in the *Petersfield*, F. & F. 261, the committee proceeded with a scrutiny, on the production of the printed lists revised by the barristers, no register ever having been made. In the *Worcester case*, K. & O. 239, the committee stated, "That they would not proceed in a scrutiny without the production of the register. How was it possible for them to decide whether a voter possessed at the poll the same qualification for which his name was inserted in the register, unless they had the register before them?" Though the reason here assigned for the necessity for the production of the register no longer exists, it may be expected that committees will still, in all cases of scrutiny, require the register to be produced, as it is necessary for the purpose of identifying the person polling with the voter on the register.

Difficulties used formerly to arise with regard to the proper custody of the register. See *Lewes*, Bar. & Aust. 112; *Wigan*, Bar. & Aust. 127. Provision has been made for the better custody of English registers by the 6 Vict. c. 18.

As to Counties it is provided, by sect. 47, that the county lists signed by the revising barrister, shall be transmitted by him to the clerk of the peace, who is forthwith to cause the said lists to be copied and printed in a book or books,—and the clerk of the peace shall *sign* and deliver the said book or books on or before the last day of November in the current year to the sheriff of the county, to be by him and his successors in the office of sheriff safely kept.

In Boroughs, in like manner, the lists signed by

the barrister, are to be transmitted to the town-clerk, to be by him printed, and then to be signed by him and delivered to the returning officer, to be by him and his successors, as returning officer, safely kept. (Sect. 48). By sect. 49 it is provided, that the said printed books so signed as aforesaid by the clerk of the peace, or town-clerk respectively, and given into the custody of the sheriff or returning officer, *shall be the register of voters* for one year. In the *Leicester case*, 1848, Minutes, p. 25, the register was produced by the town-clerk, who stated that he kept it on behalf of the mayor who was the returning officer; the register had been handed to him by the mayor.

Irish Register.] The 13 & 14 Vict. c. 69, makes similar provisions for the authentication and custody of registers in Ireland. By sect. 63, as to counties; and by sect. 64, as to boroughs. Sect. 65, enacts, that the said printed book or books so signed as aforesaid by the clerk of the peace, and given into the custody of the sheriff, or returning officer, shall be the register for one year.

Scotch registers.] The recent statute, 19 & 20 Vict. c. 58, has provided for the custody of registers for *burghs* in Scotland. By section 29 of that act, the town-clerks of every burgh are to cause the burgh lists to be printed in a book, and they are then to sign such book, and deliver the same to the sheriff of the county, to be by him kept. And by section 30, it is enacted that the said printed book or books so signed by the town-clerk and delivered to the sheriff shall be the register for such burgh.

It appears, therefore, that the sheriff of the county, who is always the returning officer for every burgh

in Scotland, is now the person to have the custody of, and to produce the register.

With regard to Scotch *counties* there is no distinct enactment for the custody of the registers; but it would appear from 2 & 3 Wm. 4, c. 65, s. 22, that the sheriff clerk of each county is the proper person to keep the registers.

13. *Proof of Proceedings at Revision.*] When it is sought to prove that voters have been objected to before the revising barrister, the lists of objections delivered to him should be produced. So also when a claimant has been objected to, by notice in writing under sect. 39 of 6 Vict. c. 18; the notice handed into the barrister should be produced.

The decision of the barrister to retain any name upon the lists, or to insert any therein, or to omit, or expunge any name from the lists, will appear upon the production of the lists signed by the barrister. Whether the barrister pronounced any *express decision* on the subject may be proved by himself or by any one who was present at the time. See *1st Harwich*, 1851.

As to what is an express decision of the barrister, *vide ante*, SCRUTINY, p. 428

Proof of Claims]. It is frequently necessary to prove, in a case of scrutiny, that a voter has made a claim to be registered.

In *Helling's case*, *Taunton*, F. & F. 811, a witness having stated that he had made a claim for the voter, this was objected to; the witness then said he had not the written claim, but he had an examined copy; objection was made to the reception of the copy, as the contents of the claim were of the very essence of

the voter's title; it was contended, on the other hand, that the fact of the barrister having adjudicated on the claim, was sufficient evidence that a proper written claim had been made. The committee decided that the *original* claim must be produced.

In *Whysall's case*, *Wigan*, Bar. & Aust. 175, in order to prove that a voter had made a claim to be registered, the overseer was called, who stated that he had received a notice of claim purporting to be given by the voter, and that he had made out a list of claims; having produced a copy of the list, the overseer was asked if the list contained the names of all persons whose names had been sent in as claimants. The committee decided that the question could not be put. It was then proposed to shew, from the list signed by the revising barrister, that the case had been adjudicated upon. The committee resolved, "That the revising barrister's list, now produced, does not afford, of itself, *conclusive* (a) evidence that the name of E. W. was inserted in the list of claims." The committee afterwards admitted in evidence a notice of claim produced by the assistant overseer, without proof of the signature of the claimant, and though it did not state his place of abode. The decision of the revising barrister upon the claim was then proved by the person who had objected to the claim at the revision. Bar. & Aust. 179.

It is observed by Mr. *Rogers* (b), "It would seem that as this is an appeal from the judgment of the

(a) *Quare primâ facie*.

(b) *Rogers on Com.* p. 139.

revising barrister, whatever the barrister actually had before him, and upon which he adjudicated, whether the original claim, or the printed copy furnished by the overseers, would be sufficient evidence."

In *Norris's case*, *Bedford*, F. & F. 434, the written claim was not called for. In the *Carnarvon case*, P. & K. 459, the original claim was not produced or called for; but upon proof that the *list of claimants* produced before the barrister had been lost, the committee allowed printed copies of it to be given in evidence.

In a recent case, 1st *Harwich*, 1851, Minutes, 222, evidence was given that a claim had been objected to, and decided upon by the revising barrister, without the production of the original claim, or the list of claimants made by the overseers.

In *Bagshawe's case*, before the same committee, Minutes, p. 239, parol evidence was given that the voter was a claimant at the revision, and that the barrister inserted the name in the lists.!

CHAPTER XII.

GENERAL BRIBERY.

1. *Proceedings in cases of Compromise.*
 2. ————— *when further Inquiry recommended.*
 3. *Petitions alleging general Bribery.*
 4. *Petitions, when Election petition withdrawn.*
 5. *Inquiry by Commissioners, 15 & 16 Vict. c. 57.*
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IN consequence of the facility with which cases of bribery were made out, by means of the enactment 4 & 5 Vict. c. 57, considerable alarm was created in the minds of the parties petitioned against in the session of 1842, and a great number of the inquiries then pending were smothered, by means of compromises entered into among the different parties.

A committee of the House was appointed to inquire into these transactions, the history and proceedings of which, are given at length in the report of the *Nottingham case*, Bar. & Arn. 140.

In order the more effectually to prevent such corrupt compromises for the future, the 5 & 6 Vict. c. 102, intituled, "An Act for the better discovery and prevention of Bribery and Treating at the Election of Members of Parliament," was passed in August 1842.

The 1st section of that statute recites, "That the laws then in force were insufficient for the discovery of bribery; that it was expedient to give further powers for that purpose, and to collect evidence on which to found further proceedings in regard to places where bribery has been *generally or extensively* practised."

1. *Proceedings in cases of Compromise.*] It is then enacted, "That whenever charges of bribery, which have been made either in the petition, or stated, by way of recrimination, shall be withdrawn or abandoned, or not *bonâ fide* prosecuted before the committee, the committee shall have power to examine into, and ascertain the circumstances under which these charges of bribery shall have been withdrawn or abandoned. So that the committee may ascertain whether there has been any compromise or covert arrangement or understanding in order to avoid the discovery of bribery at the election" (a).

The committee, in prosecuting such an inquiry, may call before them, as witnesses, the *sitting member, or the candidate, their several agents, and all other persons concerned in the abandonment of the charges of bribery*. Such witnesses must, however, be examined according to the ordinary rules of evidence.

On the trial of the 1st *Horsham Petition*, 22nd March, 1848 (see Printed Minutes), the counsel for the sitting member stated, that he could not deny that treating to a considerable extent had taken place at the election, under the authority of the agents of the sitting member. Some witnesses were then called by

(a) See *Rochester*, 1856, 2 P. R. & D. 344.

the petitioners to prove the treating. The committee then called upon the counsel for the petitioners to state his views upon the other parts of the petition which alleged bribery.

The counsel stated, that he did not intend to proceed any further in the prosecution of the petition. The committee, after declaring the election void, *resolved*, "That, with reference to an allegation contained in the petition of the *existence of bribery* at the last election for the borough of *Horsham*, the counsel for the petitioners be requested, in accordance with the resolution of the committee, to *produce the list of the names* of the electors alleged to have been bribed, and those of the persons who are charged with having given the bribes." The counsel then stated, that, although he had been prepared to substantiate by evidence (so far as he could judge from the instructions contained in his brief) the charges of bribery alleged in the petition, yet, having now, as counsel for the petitioners, obtained all that they required, he withdrew from any further prosecution of the case. Thereupon the committee *resolved*, "That the agents be called in, and examined with reference to any circumstances which may have led to the forbearance to prosecute the charges of bribery alleged in the petition." The agents accordingly were examined by the committee; very little light, however, was thrown upon the transaction, and the committee then came to the resolution, "That the circumstances attending the forbearance to prosecute the charges of bribery contained in the petition, do not appear to the committee to call for any special report with reference to such

forbearance." This was accordingly reported to the House (a).

2. *When further inquiry recommended.*] By the 2nd section of the same statute it is provided, that if *any committee nominated to try an election petition*, shall recommend that *further inquiry* and investigation should be made regarding bribery at the election, the Speaker is to nominate an agent to prosecute the investigation. The committee is to reassemble within fourteen days, to inquire whether bribery was practised at the election, and to what extent; the committee are then to report to the House all the matters relating to the bribery, together with the names of the parties implicated (b).

The seat, or return of any member, would not be affected by such a report, nor is the issuing, or restraining the issue of any writ for a new election, to be affected by such a report. The meaning of which must be, that of itself the report is not to operate to restrain a writ from issuing, for there can be little doubt that the House would resolve that no fresh writ should issue, if extensive bribery was disclosed upon such an inquiry, supposing the seat to be then vacant.

The committee, which re-assembles under this provision, has power to examine members, candidates, agents and other persons, and to call for the production

(a) The circumstances connected with the abandonment of the charges of bribery in the 1st *Horsham Petition*, are disclosed in the 2nd *Horsham*, 1848, Minutes, 222.

(b) *Rye*, 1853, 2 P. R. & D. 119; *Plymouth*, 2 P. R. & D. 241.

of papers and writings, in the same manner as if they were trying an election petition.

The words in the second section are quite general; *any committee nominated to try an election petition* may recommend the further inquiry, whether the petition contained charges of bribery or not. Therefore, if, in a case of *scrutiny* it appeared, that a number of voters had been bribed, it would be open to the committee to recommend that a further inquiry should take place into the circumstances attending such bribery, although there were no charges of bribery in the petition. If the petitioning candidate were seated on the scrutiny, his seat could not afterwards be endangered by the report of the committee. See sect. 13.

Provision is made by section 14, for defraying the expenses of the prosecution of such an inquiry by the agent appointed by the Speaker. The money is to be advanced by the Commissioners of the Treasury, upon receiving the certificate of the agent.

3. *Petitions alleging general Bribery.*] By the fourth section of the same act it is provided, that petitions complaining of general bribery at an election, not only at the *last* election, *but also at previous elections*, may be presented to the House, *after* the time limited for presenting election petitions which attack the seat.

A petition of this kind must be presented within *three calendar months next after some one or more of the acts of bribery charged therein shall have been committed*. If this time shall expire during an adjournment

of the House, then the petition must be presented within two days after the end of the adjournment. If the time expires during the prorogation of Parliament, then within thirty days after the beginning of the next session.

Such petition, alleging general bribery, must be subscribed like an election petition, either by a person who had a right to vote at the election, or by some person who was a candidate at the election.

Before any proceedings are taken with regard to such a petition, a recognizance must be entered into, in the same manner, and before the same persons, and with the like affidavit of sufficiency, as a recognizance of sureties in the case of an election petition (sect. 9), *vide ante*, p. 283.

This recognizance must be entered into, some time before three o'clock in the afternoon of the seventh day, after the day on which the petition has been presented, and may be by one person for the sum of 500*l.* or by two persons, for 250*l.* each. The condition being, that the recognizance will be forfeited *unless such persons shall establish and prove to the satisfaction of the committee* to which the petition should be referred, that there was *reasonable and probable ground* for the allegations contained in the petition. (Sect. 7).

The recognizance when entered into, is to be reported by the examiner to the Speaker, and thereupon the Speaker is to communicate the report to the House, and to send notice to the returning officer of the place, at which the bribery is said to have taken place. The returning officer is to affix a copy of the notice on or near the door of the town hall, or parish church nearest to the place for which the election was

held. The notice is also to be inserted, by order of the Speaker, in one of the next two *London Gazettes*.

Recognizance may be objected to.] The recognizance may be objected to, on the same grounds as those on which sureties entering into recognizances in the case of *election petitions* may be objected to. The grounds of objection must be stated in writing under the hand of the objecting party, or their agent, and must be delivered to the examiner within ten days after the insertion of the notice in the *Gazette*, if the party objected to resides in England, or within fourteen days, if the party reside in Scotland or Ireland. *Ante*, p. 287.

The persons who are entitled to object to the recognizance are, 1st, any candidate at the election to which the petition relates; 2nd, any person complained of in the petition; 3rd, any person who voted, or had a right to vote at such election. (Sect. 11).

In order to ascertain the validity of the objections, the examiner has the same powers for inquiring into them as he has in the case of election petitions, presented under the 11 & 12 Vict. c. 98. His report, upon the sufficiency of the recognizances, is to be made in the same manner. *Ante*, p. 290.

Petition referred to General Committee.] The petition is referred in the same manner as election petitions are, to the general committee of elections. If the examiner of recognizances reports that the recognizance is sufficient, the general committee proceed to appoint a select committee to try the allegations in the petition, in the same manner as *election* committees are appointed. This select committee has all the same powers of enforcing the attendance of witnesses, and taking evidence that are conferred by the 11 & 12 Vict. c. 98, on election committees.

Select Committee to Report.] The select committee are to ascertain, in the first instance, whether any of the acts of bribery charged in the petition, have been committed within *three months* before the time of presenting the petition, unless one or more of the acts of bribery have been committed *within that period*, the committee can proceed no further with the matter of the petition. (Sect. 5).

As such a petition may be presented at a *later* period than the expiration of the *three months*, if that should occur during the prorogation of the House, this fifth section would probably be read as embracing that extension of the time.

When the committee have ascertained that some of the acts of bribery have been committed within the time limited, they are then to proceed with the matters of the petition, and inquire and ascertain whether bribery was or was not practised at the election; and they are to report to the House, as may seem expedient to them, all the matters relating to the bribery, together with the parties implicated and concerned therein. (Sect. 4).

If the committee shall report that there was *reasonable and probable ground* for the allegations in the petition, they may order that the costs of the petitioners shall be defrayed, as in the costs of parties before public committees. (Sect. 4).

Such committee has no power or authority in any way to affect the seat or return of any member, nor can they restrain the issuing of any new writ. (Sect. 13).

If the charges are not made out, and there appears to have been no *reasonable ground* for making them,

the recognizance will be forfeited. The chairman certifies the forfeiture; and the sums may then be recovered from the parties who have entered into the recognizance by information by the Attorney General. The certificate of the forfeiture, by the chairman, cannot be called in question; his handwriting to the certificate has only to be verified.

4. *Petitions, when Election Petition withdrawn before Committee appointed.*] Provision is also made by the 6th section of the act for further inquiry into bribery, when any election petition *containing* a charge of bribery has been withdrawn, before a select committee has been appointed to try it.

When such has been the case, a petition complaining of *general* or *extensive* bribery at *such* election, may be presented at any time within *twenty-one* days after the withdrawal of the *election petition* has been notified to the House. A further period is allowed, if the twenty-one days expire during an adjournment at Easter or Christmas, or a prorogation of the House. The petition is then to be presented within two days after the end of the adjournment, or within fourteen days after the beginning of the next session.

It is not necessary, with regard to *this* petition, that any of the acts of bribery complained of should have been committed *within three calendar months* of the presentation of the petition.

This petition may be subscribed either by persons claiming to have had a right to vote at such election, or by a person alleging himself to have been a candidate or claiming to have had a right to be returned at the election. A recognizance is to be entered into in

the same manner as in the case of a petition presented within three months after the commission of the acts of bribery. The mode of inquiring into, and reporting upon the sufficiency of the recognizance is the same. The select committee, which is to be appointed by the general committee in the same manner, has a similar power of inquiring into the allegations in the petition, and of reporting to the House.

No report of such a committee can affect the seat of a member, or restrain the issuing of a writ.

The forfeiture of the recognizance is to be certified in the same manner by the chairman, as in the case of petitions presented within the three months of the acts of bribery.

Committees may order costs to be paid.] The select committees appointed to try these petitions complaining of *extensive bribery*, and also the committee *re-assembling* under the provisions of the second section of the act, have power, in their discretion, to order that the expenses incurred and occasioned in such inquiries into bribery before them, or any part of such expenses, shall be paid *by any person, who having been first heard before the committee, shall have been proved to have been guilty of bribery, or of having received bribes, or shall have been proved to have occasioned expense by bringing forward frivolous charges of bribery against other persons.* (Sect. 15).

A certificate, signed by the Speaker, stating the amount of the costs to be paid by each of the parties, will be *conclusive* evidence of their *liability*, and of the *amount* they have to pay.

It is provided further, by section 16, that all costs, charges and expenses mentioned in the report of any

committee, sitting under the authority of this act, are to be ascertained and allowed *in the same manner* as the costs, charges and expenses of petitions reported to be frivolous and vexatious. And the same mode is provided for the recovery of such costs.

Ample as are the provisions of this statute for inquiring into general bribery at elections, it is not probable that they will often be called into use. An unsuccessful candidate at an election will feel little interest in petitioning the House on the subject of bribery, when he has no chance of obtaining the seat on that petition, or even of having a fresh writ issued. Electors are still less likely to petition when nothing is to be gained by their petition; for if the charges preferred are true, there is always a probability that the place from which the petition proceeds may, in consequence, be disfranchised. In disclosing cases of corruption, electors are, in general, more influenced by the desire of obtaining a triumph for their party, than by any abstract love of purity of election.

5. *Inquiry before Commissioners.*] A recent statute, the 15 & 16 Vict. c. 57, intituled "An act to provide more effectual inquiry into the existence of corrupt practices at elections for members to serve in Parliament," has made further provision for inquiring into cases of corrupt practices at elections.

It recites that "it is expedient to make more effectual provision for inquiring into the existence of corrupt practices at elections." And it enacts, that, when upon a joint address of both Houses of Parliament to her Majesty, it shall be represented that an election committee, or a committee appointed to in-

quire into the existence of corrupt practices, shall have reported that corrupt practices have, *or are believed to have* prevailed extensively at any elections, commissioners may then be appointed to inquire into such alleged corrupt practices.

Such commissioners are to inquire into the manner in which the election complained of has been conducted; when the report of the committee refers to *more than one* election, they are to inquire in the first instance into the proceedings at the *latest* election. They are to investigate into the nature of the corrupt practices that may have occurred, and if they shall find that corrupt practices have taken place at such *last* election, they are then to make inquiries concerning the *latest previous* election; if corrupt practices shall appear to have taken place at that election, the commissioners may then go a step further back, and make inquiries as to the *previous* election; and so in like manner from election to election, *as far back* as they may think fit. Whenever the commissioners fail in discovering corrupt practices *at any election in the series*, they are not to inquire concerning any previous election.

The commissioners are from time to time to report the evidence taken before them; and more especially with respect to *each election* they are to report, the names of all persons whom they may find to have been guilty of corrupt practices at such elections, as well those who have given bribes, or payments by way of head-money, as those who have received such bribes or payments.

The reports of the commissioners are to be laid before Parliament.

CHAPTER XIII.

ON COSTS.

1. *Regulated by Statute.*
2. *Costs when Petition withdrawn.*
3. — *awarded by Examiner.*
4. *Petition reported frivolous, &c.*
5. *Opposition reported frivolous, &c.*
6. *When no one appears to oppose.*
7. *Unfounded allegations.*
8. *On objections to Voters.*
9. *How ascertained, &c.*
10. *Recognizances, when estreated.*

THE power of committees to award costs against parties, on election inquiries, is regulated by the statute 11 & 12 Vict. c. 98. Although committees were frequently in the habit of granting costs, even prior to the Grenville Act, the 10 Geo. 3, c. 16, under a resolution passed at the commencement of every session, there existed no statutory authority for the giving of costs until the passing of the 28 Geo. 3, c. 52.

In certain cases the right to receive costs follows as a matter of course, upon the decision of the committee ;

in others the question of costs must be made the ground of special application.

Besides those cases which arise before the committee, parties may become liable in two other instances to the payment of costs, *viz.*, 1st, when the petition is withdrawn *before* a committee is appointed; and, 2ndly, when costs are awarded by the Examiner of Recognizances.

2. *Costs when Petition withdrawn.*] Power is given by section 8 of 11 and 12 Vict. c. 98, to a petitioner to withdraw his petition at any time after it has been presented, on giving a *written notice* to the Speaker, the sitting member, and to any party admitted to defend; such notice informing these parties that it is not intended to proceed with the petition.

In such a case the petitioner will be liable to the payment of such costs and expenses as have been incurred by the sitting member, or other party complained of in the petition, and also to the payment of such costs as have been incurred by any party admitted to defend. These costs will be ascertained on taxation before the Examiner of Recognizances, or the Taxing Officer of the House of Commons, in the same way as other costs are taxed. This will be described hereafter.

Under the 28 Geo. 3, c. 52, there being no power to withdraw a petition in the manner now provided by 11 & 12 Vict. c. 98 (*a*), the question often arose before committees, whether such notice had been given to the sitting member of the intention not to prosecute the

(a) A similar power was given by 7 & 8 Vict. c. 103.

petition, as to relieve the petitioner of his liability to costs. In the cases of *Shaftesbury*, 1 Peck. 18; *Inverness*, ib. 109; *Penryn*, ib. 251; *Evesham*, ib. 471, the committees did not vote the petitions to be vexatious when no evidence was produced to attack the seat. In the *Midhurst case*, 2 Peck. 146; *Ilchester case*, 2 Peck. 274, the committees voted the petitions to be frivolous and vexatious, although no evidence was called, and notice had been given that it was not intended to prosecute the petition.

In the *Bishopscastle case*, 1 Peck. 469, it did not appear that any notice had been given of the intention to abandon the petition, but no evidence was produced by the petitioners, and the counsel for the sitting member renounced all claim to costs; the committee, however, resolved, that the petition was frivolous and vexatious. See *Orme on Elections*, 494.

When it is intended not to prosecute a petition, timely notice should be given in writing, so that all unnecessary expenditure may be saved.

3. *Costs awarded by Examiner.*] The Examiner of Recognizances, when he is inquiring into the validity of the objections alleged against the recognizance, or sureties, has power under section 15 of 11 & 12 Vict. c. 98, to award costs, if he shall think fit, to be paid by either party to the other; these costs are to be taxed, and recovered as costs awarded by committees.

4. *Petition reported frivolous or vexatious.*] "Whenever any committee appointed to try an election petition, reports to the House that such petition was frivolous or vexatious, the parties, if any, who have

appeared before the committee in opposition to such petition, shall be entitled to recover from the petitioners or any of them, *their full costs and expenses.*"

No evidence called.] If the petitioners have given no notice in writing, of their intention to abandon their petition, and upon the meeting of the committee they decline to proceed with their case, there can be little doubt that a committee at the present time would report the petition to be frivolous and vexatious (a).

Probably an exception would be allowed, if it could be satisfactorily proved to the committee, that some one or more witnesses had *died so recently* that notice could not be given in time, the evidence of such witnesses being shewn to be essential to the prosecution of the inquiry. In the *Midhurst case*, 2 Peck. 146, it was sworn before the committee, that the evidence of a deceased witness was material, but the counsel who gave this testimony declined to state the nature of the evidence that would probably have been given, on the ground of professional confidence; the committee, it would appear, were not satisfied, and they reported the petition to be frivolous and vexatious.

Where five of the most material witnesses had died after the presentation of the petition, the committee determined that the petition did not appear to be frivolous or vexatious; *Honiton*, 2 Fraz. 246. See also *Hedon*, 1826, cited in note to *Portarlington case*, P. & K. 241. At the present time, as notice may be given, the petition ought to be withdrawn before the committee is appointed.

If the petitioners were unable to proceed with their

(a) *Rochester*, 2 P. R. & D. 344.

case, in consequence of the abduction of their witnesses, by the agents on the other side, (as in the *St. Alban's case*, 1851,) a committee would, no doubt, report that the petition was *not* frivolous or vexatious.

In the *Dover case*, 9th March, 1821, cited in P. & K. 241, the petition was voted frivolous and vexatious, because no sufficient notice had been given to the returning officer, who had, in consequence, been put to considerable expense. It does not appear how this question of want of notice was raised; it is clear, that, now, such an objection, which is an objection to the constitution of the committee, could not be entertained by them. *Ante*, p. 329.

Where a petition was presented by the advice of counsel, but the petitioners afterwards declined going into evidence to support the allegations contained in it, being satisfied that the two opinions of counsel, upon which they had acted, were erroneous in point of law, the committee reported the petition to be frivolous and vexatious. *Bodmin*, 2 Fraz. 336.

Case abandoned after opening.] When the petitioners have opened their case, and called evidence upon it, and then have abandoned the further prosecution of the inquiry, committees have in some instances reported the petition to have been frivolous and vexatious.

In the *Lancaster case*, C. & D. 195, the committee sat for two days hearing evidence on the allegations in the petition; on the third day the counsel for the petitioners stated to the committee, that *want of money* rendered it absolutely impossible for the petitioners to proceed. The committee resolved the petition to be frivolous and vexatious.

In the *Sutherland case*, 2 Fraz. 157, two petitions were presented; the evidence offered in support of one was decided to be inadmissible, and that petition was withdrawn; the other petitioner then stated, that he had no evidence to offer: the committee reported the second petition to be frivolous, but not the first.

Where the petitioners withdrew, in consequence of the committee allowing evidence to be produced by the sitting member, to shew that the petitioners knew that their witnesses were unworthy of credit, the committee decided that the petition was frivolous and vexatious. *Londonderry*, P. & K. 277.

On final decision of Committee.] When a petition has been prosecuted without reasonable and probable grounds of success, or, where the law on the subject is quite clear, committees have, in general, pronounced the petitions to be vexatious.

Thus, where the claim of the right of election was in direct opposition to a well known determination of the House of Commons, and the charges preferred against the returning officer were groundless, and contradicted by the acknowledgment of the petitioner himself at the election, the committee decided the petition to be frivolous and vexatious. *East Grinstead*, 1 Peck. 334.

So also, where the eldest son of a Scotch representative peer was objected to for want of qualification, the committee resolved that the petition was frivolous and vexatious. *Rochester*, C. & D. 238. It was clear, that a Scotch representative peer was a "peer or lord of Parliament" within the statute 9 Anne.

In the *2nd Maidstone*, F. & F. 681, where no evidence was brought forward to shew that the sitting

member had been unseated on the former petition, for matters that disqualified him from standing again, the committee decided the petition to be frivolous and vexatious. See also *Bolton*, 2 P. R. & D. 222; *Sligo*, 1856, ib. 346; *Guildford*, ib. 114.

5. *Opposition reported frivolous or vexatious.*] It is enacted by section 90 of 11 & 12 Vict. c. 98, that, whenever a committee reports to the House that the *opposition* made to any petition, by any party appearing before them, was frivolous or vexatious, the petitioners shall be entitled to recover from the party with respect to whom such report is made, the *full costs and expenses* which such petitioners have incurred in prosecuting their petition.

Whether it be that petitioners are in general sufficiently satisfied with succeeding on their petition, so that they have no desire to press for costs, or that committees are unwilling to visit a sitting member with so heavy an affliction, in addition to the loss of his seat, it is certain that it has rarely been the case that the opposition to a petition has been decided to be vexatious.

It is observed by Mr. *Rogers* (a), "committees seem to have been slow to report the opposition made by the person in possession of the seat to be frivolous or vexatious."

In the 2nd case of *Southwark*, Cliff. 343, when the committee decided that Mr. Thelluson was ineligible, by reason of the conviction of treating by the former

(a) Rogers on Com. p. 257.

committee, they at the same time resolved, that his opposition to the second petition was not frivolous or vexatious. In like manner in the *2nd Canterbury case*, Cliff. 361, though the sitting members were decided to be ineligible, by reason of the former decision, the opposition was decided not to be frivolous.

It may be observed, however, with regard to these cases of notorious ineligibility, that if a candidate who had been resolved to have been guilty of bribery or treating, were *now* to stand on the vacancy so created, a committee would probably consider his election vexatious, and visit him with costs if he opposed the prayer of the petition. At the time that the cases in *Clifford*, were decided (1796), the law was not so well settled as it is at present; and further, in the second *Canterbury case*, there was a doubt as to what were the grounds of the decision of the first committee.

In the *Fife case*, 1 Luders, 455, where the member was ineligible by reason of office, no resolution appears to have been come to, whether the opposition to the petition was vexatious or not. So also in the *Kirkcudbright case*, 1 Luders, 72, it does not appear that any application was made for costs, or that the committee came to any resolution on the subject.

In a more recent case; *2nd Newcastle-under-Lyme*, Bar. & Aust. 583, the committee, though they unseated the member on account of his having been declared by a committee to have been guilty of bribery by his agents at the previous election, came to no resolution with regard to the opposition to the petition. It does not appear that any application was made for costs in this case.

When members have been unseated, on account of

bribery or treating by their agents, committees have not been in the habit of considering their opposition *vexatious*. *Hertford*, P. & K. 541; *Warwick*, P. & K. 585; *Oxford*, P. & K. 58. If a member was found guilty of *personal* bribery, a committee would probably consider his opposition vexatious; when he is charged with bribery or treating by his agents, he has a right to presume that they are innocent, until the contrary is proved, and, therefore, to oppose the prayer of the petition. *1st Cheltenham*, 1 P. R. & D. 186.

When the sitting member or his agents have been concerned in the abduction of witnesses, in order to prevent the investigation of the allegations in the petition, there is no doubt that a committee, upon finding the charges in the petition to be proved, would declare the opposition to be frivolous and vexatious. See *Ipswich*, K. & O. 373.

In the *Flintshire case*, 1 Peck. 526, the sitting member was notoriously under age, he had given notice to the Speaker, some time before the appointment of the committee that he did not intend to defend his seat; the committee, however, resolved, that his election and return were vexatious.

In a case where the sitting member had no property qualification at the time of the election, and the circumstance was well known to him, the committee decided the election to have been vexatious, although he had given notice before the appointment of the committee, that he did not intend to defend his seat. *Tiverton*, P. & K. 269; see also *Mallow*, P. & K. 266.

In the *Derby case*, 1848, 1 P. R. & D. 104, the defence of the seat was abandoned in the middle of the case, as it appeared unanswerable that illegal pay-

ments had been made by the agents of the sitting member without his knowledge; the committee refused to grant costs on the ground that the opposition was frivolous and vexatious.

6. *When no one appears to oppose.*] It is further provided, by section 91, That, whenever no party has appeared before any committee in opposition to such petition, and such committee reports, that the election or return, or the omission or insufficiency of a return complained of in such petition was vexatious or corrupt, the petitioners shall be entitled to recover from the sitting members (if any), whose election or return is complained of, *if the members have not given the notice before mentioned*, and from any person admitted to oppose the petition, the full costs and expenses to which the petitioners have been put.

In the *Tiverton case*, P. & K. 271, in a note, it is observed it is very questionable whether costs can be recovered in a case, where the sitting member has given notice of his intention not to defend his seat and no one appears to oppose.

In the *Tiverton case*, the sitting member gave notice on the 21st February that he did not intend to defend his seat: the ballot for the committee being at that time fixed for the 28th. The order for considering the petition was thereupon discharged, and the committee was not appointed until the 10th of May, when the committee resolved that the election was vexatious.

Unfounded Allegations.] By section 93 of 11 & 12 Vict. c. 98, it is provided, That if *either* party make before the select committee any specific allegation with

regard to the conduct of the other party, or his agents, and either bring no evidence in support of it, or such evidence that the committee is of opinion that such allegation was made, *without any reasonable or probable ground*, the committee may make such orders as to them may seem fit, for payment by the party making such unfounded allegations to the other party, of all costs and expenses incurred *by reason of such unfounded allegation*.

In the *Bewdley case*, 1848, Minutes, 169, at the close of the case against the sitting member, an application was made, by his counsel, for costs in the cases of alleged bribery, which had not been gone into by the petitioners; there being ten cases in the list handed in, of which only three had been brought before the committee, and one case only was found to be proved. It was opposed, on the ground that the 92nd section of 7 & 8 Vict. c. 103 (the same enactment as in the present statute) applied only to the general allegation of bribery or treating in the petition, both of which had here been proved, and not to the specific cases included in the lists; which were handed in, not in compliance of any statutory regulation, but in accordance with a resolution of the committee. The committee refused to give costs in these cases.

In the same case of *Bewdley*, Minutes, 337, the sitting member, in recrimination, preferred charges of bribery and treating against the petitioning candidate and his agents. Several cases of bribery were stated in the list handed in. Four of them were charges of *personal* bribery against the candidate; on three of these no evidence was offered. As to the fourth charge, the committee had said that it did not require

an answer. Evidence was given upon some of the other charges of bribery by agents, but the committee had decided that none of the cases of bribery were proved. An application was made, on behalf of the petitioner, for costs, on the ground that the whole allegation as to bribery had failed. The counsel for the sitting member contended, that the only distinction between the case of the petitioner and that of the sitting member was this, that in the former, one case of bribery had been proved, while in the latter, all had failed. The committee decided that they would not give costs on this allegation.

In the *Lyme Regis case*, Minutes, 256, a great number of cases of bribery were contained in the list given in on the part of the sitting member; among them was one which alleged bribery against the vicar of the parish; no evidence had been called in this case, and an application was made for costs. It was answered that the sitting member was prepared to go on with this case, but, that several of the witnesses in it had been discharged, as it was not intended to go through the forty cases contained in the list. The committee refused the application for costs, but stated that they thought that a case affecting the vicar of the parish ought to have been brought forward among the very first, and that the committee observed, that no evidence whatever had been adduced upon the subject.

In the case of *Rye*, 1 P. R. & D. 115, though the seat was avoided on another ground, the committee gave costs in respect of certain unfounded allegations of bribery which had been introduced into the petition. In the *Bridgenorth case*, 2 P. R. & D. 25, the

committee ordered all the costs and expenses incurred by reason of certain allegations of bribery in the cases of thirteen voters to be paid by the petitioners to the sitting members. So also in the *New Ross case*, 2 P. R. & D. 199, where a charge was made against the sitting member without reasonable or probable cause, that he had instigated and encouraged a mob in acts of violence, the committee ordered the costs to be paid which had been incurred in consequence of such allegation.

If there is any reasonable ground for the charge contained in the petition, costs will not be ordered to be paid in respect of it, although the petitioners fail in establishing it. *Bodmin*, 1 P. R. & D. 133; *Longford*, ib. 142; *Southampton*, 2 P. R. & D. 57; *Huddersfield*, ib. 131; *Athlone*, ib. 180.

It is one of the preliminary resolutions usually passed at the commencement of the inquiry, "That if costs be demanded by either party, under the 11 & 12 Vict. c. 98, the question must be raised *immediately* after the decision on that particular case, unless the committee shall otherwise decide."

8. *Costs on frivolous Objections to Voters.*] By sect. 92, it is enacted, that, if any ground of objection be stated against any voter in any list of voters intended to be objected to, and the committee are of opinion that the objection was frivolous or vexatious, they may so report to the House when they report on the other matters in the petition, and in such case the opposite party shall have their full costs and expenses incurred by reason of such frivolous objection.

The application for costs in such a case, must be made as soon as the committee have decided that the objections to the particular vote cannot be sustained.

9. *Costs, how ascertained.*] The 94th section prescribes the manner of ascertaining the amount of the costs and expenses adjudged by any select committee to be payable, and also the costs which are payable under the act to any party prosecuting or opposing, or preparing to oppose, any election petition, or to any witness summoned to attend before the committee.

The petitioner, party, or witness, must apply to the Speaker, not later than *three* calendar months after the determination of the merits of the petition, or after the order for referring it has been discharged, or after it has been withdrawn, that the costs may be ascertained.

The Speaker will thereupon direct the Examiner of Recognizances, or the Taxing Officer of the House, to tax the same. The Examiner or Taxing Officer may examine the party claiming, or the witnesses tendered by him, on oath. (Sect. 95).

The examiner, or officer, is to examine and tax the costs and expenses; to report to the Speaker the amount thereof, with the name of the party liable to pay the same, and the name of the party entitled to receive the same.

The Speaker, upon application being made to him, will deliver to the party entitled to the costs a *certificate*, signed by himself, expressing therein the *amount* of the costs and expenses allowed, with the *name of the party liable* to pay the same, and the name of the party entitled to receive the same.

Certificate conclusive.] This certificate, so signed by the Speaker, will be *conclusive evidence for all purposes whatever*, as well of the *amount* of the demand, as of the title of the party therein named to recover the same, *from the party therein stated to be liable* for the payment thereof. It is further enacted, in section 96, that *the validity of such certificate* (the handwriting of the Speaker thereunto being duly verified) *shall not be called in question in any Court.*

Mode of recovering Costs.] The party entitled to the taxed costs, or his executors, may demand the whole amount from *any one* of the persons liable to the payment thereof.

If the costs are not paid on demand, they may be recovered by an action of *debt*, in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland. It will be sufficient for the plaintiff to declare that the defendant is indebted to him in the sum mentioned in the certificate; and upon filing the declaration, together with the *certificate*, and an *affidavit* of the demand, he will be at liberty to sign judgment, and take out execution for the sum mentioned in the certificate, together with his costs in the action. (Sect. 96).

Contribution in Costs.] The person from whom the costs have been so recovered, may recover a proportionate share from the other persons liable for the costs. (Sect. 97).

10. *Recognizances, when estreated.*] If any person who has subscribed an election petition shall neglect or refuse, for the space of *seven days after demand*, to pay to any *witness* summoned *on his behalf*, before any

committee, the sum so certified by the Speaker to be due to such witness ; and also, if such petitioner shall neglect or refuse, *for the space of six months after demand*, to pay to any *party opposing* the petition the sum certified to be due for costs and expenses, and if such neglect or refusal be proved to the Speaker within *one year* of the granting of the certificate, in every such case every person who has entered into a recognizance will be held to have made default therein.

If the party entering into the recognizance reside in England, the recognizance is to be certified into the Court of Exchequer in England ; if he resides in Ireland, into the Court of Exchequer there ; and if in Scotland, into the Court of Exchequer in Scotland ; the Speaker is to certify at the same time that such person has made default therein.

Certificate conclusive.] Such certificate will be conclusive of the validity of the recognizance, and of the default. The recognizance so certified is to be delivered by the clerk of the House of Commons, or one of the clerk's assistants, into the hands of the Lord Chief Baron, or one of the Barons of the Court of Exchequer in England, or to such officer as shall be by the Court appointed to receive the same. The delivery has the same effect as if the recognizance were estreated in a Court of law. (Sect. 98).

If the person making default resides in Ireland or Scotland, the recognizance and certificate are to be transmitted through the post, by the clerk of the House of Commons, or other person appointed by the Speaker, directed to the Lord Chief Baron in Ireland, or to one of the Judges of the Court of Session dis-

charging the duties of the Court of Exchequer in Scotland, as the case may be.

The recognizance is to be delivered to the Postmaster General, or person appointed to receive the same, who is to give an acknowledgment of the receipt thereof. The recognizance is then to be transmitted by post by the first mail, to be forthwith delivered. (Sect. 99).

This transmission is to have the same effect, as if the recognizances were estreated in a Court of law. (Sect. 98).

The *validity* of such *certificate* (the handwriting of the Speaker thereto being duly verified) *cannot be called in question*.

Any surety, before his recognizance is estreated, may pay the sum for which he is bound into the Bank of England, to the account of the Speaker and the Examiner of Recognizances. The recognizance, so far as such person is concerned, will be vacated, upon the examiner indorsing a memorandum of such payment on the recognizance, which will be done on the production of the Bank receipt for the money. (Sect. 101.)

Application of estreated Monies.] All monies received or recovered by the estreating of recognizances, after deducting all expenses incurred in respect thereof are to be paid into the Bank of England, to the account of the Speaker and Examiner of Recognizances, and are to be applied, as far as they will extend, in satisfaction of the costs and expense secured by the recognizance. (Sect. 100).

Of Monies paid in.] Upon payment of money into the Bank, a bank receipt for the amount paid in is to

be delivered to the examiner by the person paying in the same, and such money is to be applied in such order of payment as the examiner (with the approbation of the Speaker) may think fit, in satisfaction of all costs and expenses, and the residue (if any) is to be transferred to the account of the person paying in the same. (Sect. 102).

Returning Officer may be sued.] By the 103rd section, any sheriff, or other returning officer, wilfully delaying, neglecting, or refusing to return any person who ought to have been returned, may, in case a select committee have decided that such person ought to have been returned, be sued for such delay, neglect, or refusal, in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland.

The action must be commenced *within one year* after the commission of the act on which it is grounded, or *within six months* after the conclusion of any proceeding in the House of Commons relating to such election. In such an action the party bringing it will be entitled to recover double the damages he has sustained, together with full costs of suit.

APPENDIX.

24 GEO. 3. SESS. 2, c. 26.

An Act to repeal so much of two Acts, made in the tenth and fifteenth years of the reign of his present Majesty, as authorizes the Speaker of the House of Commons to issue his Warrant to the Clerk of the Crown for making out Writs for the Election of Members to serve in Parliament, in the manner therein mentioned; and for substituting other Provisions for the like Purposes.

Whereas by an act made in the tenth year of the reign of his present Majesty, intituled "An Act to enable the Speaker of the House of Commons to issue his Warrants to make out new Writs for the Choice of Members to serve in Parliament, in the room of such Members as shall die during the Recess of Parliament:" and also by another act passed in the fifteenth year of the reign of his present Majesty, for "Explaining and Amending the said Act, and for enabling the Speaker of the House of Commons to make out new Writs for the Choice of Members to serve in Parliament, in the room of such Members as shall, during the Recess of Parliament, become Peers of Great Britain, and be summoned to Parliament," and for other the purposes therein mentioned; several provisions were made for enabling the Speaker of the House of Commons to issue his warrants to the clerk of the Crown to make out new writs for electing members of the House of Commons, in the room of such members as should happen to die, or become peers of Great Britain, at the times, in the manner, and under the restric-

10 Geo. 3.
c. 41.

15 Geo. 3.
c. 36.

tions in the said several acts mentioned : And whereas the said acts have been found highly advantageous to the public. by causing speedy elections of members of the House of Commons, and it is therefore expedient that the provisions therein contained should be further extended, and freed from certain of the restrictions in the said acts particularly specified, and also that some further provisions should be made for carrying the said powers into execution, in the cases of the death of the Speaker of the House of Commons for the time being, or of his seat in Parliament becoming vacant, or of his absence out of the realm ; and it would be also convenient that the provisions contained in the said two several acts of Parliament, and of this act, should be reduced into one act of Parliament, and that, for that purpose, those provisions contained in the said two several acts should be repealed :” Be it therefore enacted by the King’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, the said act, passed in the tenth year of the reign of his present Majesty, and also so much of the said act, passed in the fifteenth year of the reign of his present Majesty, as enables the Speaker of the House of Commons to issue his warrants to make out new writs for the election of members to serve in Parliament, shall be, and the same are hereby repealed.

10 Geo. 3. c. 41, repealed ; and part of 15 Geo. 3. c. 36.

Speaker to issue his warrant, during a recess, for making out writs, &c.

II. And be it enacted, That from and after the passing of this act, it shall and may be lawful for the Speaker of the House of Commons for the time being, during any recess of the said House, whether by prorogation or adjournment, and he is hereby required to issue his warrant to the clerk of the Crown, to make out a new writ for electing a member of the House of Commons in the room of any member of the said House who shall happen to die, or who shall become a peer of Great Britain, either during the said recess, or previous thereto, as soon as he shall receive notice, by a certificate, under the hands of two members of the House of Commons, of the death of such member, in the first case : and in the second case, that a writ of summons hath been issued, under the great seal of Great Britain, to summon such peer to Parliament ; which certificate may be in the form, or to the effect, comprised in the schedule hereunto annexed.

Certificates of vacancies

III. Provided always, and be it enacted, That the Speaker of the House of Commons shall forthwith, after his receiving

such certificate, cause notice thereof to be inserted in the *London Gazette*, and shall not issue his warrant until fourteen days after the insertion of such notice in the *Gazette*.

to be notified
in the
Gazette.

IV. Provided also, That nothing herein contained shall extend to enable the Speaker of the House of Commons to issue his warrant for the purposes aforesaid, unless the return of the writ (by virtue of which such member deceased, or become a peer of Great Britain, was elected) shall have been brought into the office of the clerk of the Crown, fifteen days at the least before the end of the last sitting of the House of Commons immediately preceding the time when such application shall be made to the Speaker of the House of Commons to issue such warrant as aforesaid; nor unless such application shall be made so long before the then next meeting of the House of Commons for the dispatch of business, as that the writ for the election may be issued before the day of such next meeting of the House of Commons; nor in case such application shall be made with respect to any seat in the House of Commons which shall have been vacated in either of the methods before mentioned, by any member of that House against whose election or return to serve in Parliament a petition was depending, at the time of the then last prorogation of Parliament, or adjournment of the House of Commons.

Certain re-
strictions on
the Speaker
relative to
issuing his
warrant.

V. And whereas the due execution of this act may be prevented or impeded by the death of the Speaker of the House of Commons for the time being, or by his seat in Parliament becoming vacant, or by his absence out of the realm, for which inconveniences it is expedient to provide a remedy; be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the present Speaker of the House of Commons, and he is hereby required, within a convenient time after the passing of this act, and for every future Speaker of the House of Commons, and he is hereby required within a convenient time after he shall be in that office, at the beginning of any Parliament, by any instrument in writing under his hand and seal, to nominate and appoint a certain number of persons, not more than seven, nor less than three, members of the House of Commons at the time being, thereby authorizing them, or any one of them, to execute all and singular the powers given to the Speaker of the House of Commons for the time being, for issuing such warrants as aforesaid, by virtue of this act, subject nevertheless to such regulations and exceptions as

Speaker to
authorize a
certain num-
ber of mem-
bers of the
House of
Commons,
&c.

are herein also contained, which instrument of appointment and authority shall, notwithstanding the death of the Speaker of the House of Commons making and executing the same, or the vacating his seat in Parliament, continue and remain in full force until the dissolution of the Parliament in which it shall be made.

VI. Provided always, and be it enacted, That whenever and as often as the said number of persons, so to be appointed as aforesaid, shall, by death, or by their seats in Parliament being vacated, happen to be reduced to less than three, it shall and may be lawful for the Speaker of the House of Commons for the time being to make a new appointment in the manner hereinbefore directed.

VII. Provided also, That every such appointment shall be entered in the journals of the House of Commons, and be also published once in the *London Gazette*; and the instrument of such appointment shall be preserved by the clerk of the House of Commons, and a duplicate thereof shall be filed in the office of the clerk of the Crown in Chancery.

In what cases only such persons are empowered to act.

VIII. Provided also, That nothing in this act contained shall extend, or be construed to extend, to give any power or authority whatsoever to any person so to be nominated and appointed as aforesaid, except in the case of there being no Speaker of the House of Commons, or of his being absent out of the realm, nor for any longer time than such person, so to be appointed as aforesaid, shall continue a member of the House of Commons; any thing herein contained to the contrary notwithstanding.

Publisher of the *Gazette* to give receipts for notices.

IX. And be it enacted, That the publisher of the *Gazette* for the time being, when any such notice as aforesaid of the issuing of any such warrant shall be brought to him, signed by any person so appointed as aforesaid, shall give a receipt for the same, specifying the day and hour when the same was received; and in case more than one such notice shall be brought to him, relative to the same election, such publisher shall insert in the *Gazette* only the notice first received.

SCHEDULE.

“We whose names are underwritten, being two members of the House of Commons, do hereby certify, That *M. P.*, late a member of the said House, serving as one of the Knights of the Shire for the county of [or as the case may be] died upon the day of [or is become a peer of Great Britain, and that a writ of summons hath

been issued, under the great seal of Great Britain, to summon him to Parliament], [*as the case may be*]; and we give you this notice, to the intent that you may issue your warrant to the clerk of the Crown, to make out a new writ for the election of a Knight to serve in Parliament for the said county of [*or as the case may be*] in the room of the said M. P.

"Given under our hands, this day of
"To the Speaker of the House of Commons."

Note. That in case there shall be no Speaker of the House of Commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions of this act.

52 GEO. 3, c. 144.

An Act to suspend and finally vacate the Seats of Members of the House of Commons, who shall become Bankrupts, and who shall not pay their Debts in full within a limited Time.
[23rd July, 1812.]

Whereas it is highly necessary, for the preservation of the dignity and independence of Parliament, that members of the House of Commons of the United Kingdom, who become bankrupts, and do not pay their debts in full, shall not retain their seats: Be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this act, whenever a commission of bankruptcy shall issue and be awarded against any person being a member of the House of Commons, and he shall be found and declared a bankrupt under the same, such member shall be and shall remain during twelve calendar months from the time of the issuing thereof, utterly incapable of sitting and voting in the said House of Commons, unless within the said period such commission shall be superseded, or unless within the same period the creditors of such member of the House of Commons proving their debts under the commission of bankruptcy shall be paid or satisfied to the full amount of their debts, under the said commission: Provided always, that such of the debts, if any, as shall be disputed by such bankrupt, if he

Seats of
members to
be vacated
in certain
cases of
bankruptcy.

shall, within the time aforesaid, enter into a bond or bonds, in such sum or sums, with two sufficient sureties to be approved by the commissioners under the said commission of bankruptcy, or the major part of them, to pay such sum or sums of money as shall be recovered in any action, suit, or other proceeding in law or equity, concerning such debt or debts, together with such costs as shall be given in the same, shall be considered for the purposes of this act as paid or satisfied.

Speaker to
issue writ for
election of
another
member.

II. And be it further enacted by the authority aforesaid, That if the said commission shall not within twelve calendar months from the issuing thereof be superseded, nor the debts satisfied in manner aforesaid, then the commissioners, or the major part of them named in such commission, shall and they are hereby required, immediately after the expiration of twelve calendar months from the issuing of the said commission, to certify the same, as the case may be, to the Speaker of the House of Commons of the United Kingdom, and thereupon the election of such member shall be and is hereby declared to be void; and it shall and may be lawful for the Speaker of the House of Commons for the time being, during any recess of the said House, whether by prorogation or adjournment, and he is hereby required forthwith after receiving such certificate, to cause notice thereof to be inserted in the *London Gazette*, and upon the expiration of fourteen days after the day of inserting such notice in the *Gazette*, to issue his warrant to the clerk of the Crown, to make out a new writ for electing another member in the room of such member who shall have so vacated his seat: Provided always, that nothing herein contained shall extend to enable the Speaker of the House of Commons to issue his warrant for the purposes aforesaid, unless such certificate shall have been delivered to him so long before the then next meeting of the House of Commons for the dispatch of business, as that the writ for the election may be issued before the day of such next meeting of the House of Commons.

Proviso.

Provisions of
24 Geo. 3,
sess. 2, c. 26,
extended to
act.

III. And be it further enacted by the authority aforesaid, That all and every of the powers contained in an act of the twenty-fourth year of the reign of his present Majesty, for repealing so much of two former acts as authorized the Speaker of the House of Commons to issue his warrant to the clerk of the Crown for making out writs for the election of members to serve in Parliament in the manner therein mentioned, and for substituting other provisions for the like purposes, so far as such powers enable the Speaker of the

House of Commons to nominate and appoint other persons, being members of the House of Commons, to issue warrants for the making out of new writs during the vacancy of the office of Speaker, or during his absence out of the realm, shall be and they are hereby made to be in force for the purpose of enabling him to make the like nomination and appointment for issuing warrants under the like circumstances and conditions, for the election of members of Parliament in the room of such whose seats shall become vacant under the provisions of this act.

53 GEO. 3, c. 89.

An Act for the more regular Conveyance of Writs for the Election of Members to serve in Parliament.

[2nd July, 1813.]

For the more expeditious and regular conveyance of writs for the election of members to serve in Parliament, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that when any new Parliament shall at any time hereafter be summoned or called, as also in all cases of vacancy during this present or any future Parliament, the messenger or pursuivant of the great seal, or his deputy, shall, after the receipt thereof, forthwith carry such of the said writs as shall be directed to the sheriffs of London, or sheriff of Middlesex, to the respective officers of such sheriffs or sheriff; and all such other writs to the General Post Office in London, and there deliver the same to the postmaster or postmasters general for the time being, or to such other person or persons as the said postmaster or postmasters general shall depute to receive the same (and which deputation they are hereby respectively required to make), who on receipt thereof shall give an acknowledgment in writing of such receipt to the said messenger or his deputy, from whom the same shall be received, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment, signed by the parties respectively to whom and by whom the same shall be so delivered; and the said postmaster or postmasters general, or such their deputy or deputies, shall despatch all such writs, free from

Messenger of great seal to carry writs to sheriffs of London and Middlesex; and all other writs to postmaster general, who shall forward same.

the charges of postage (which they are hereby authorized to do), by the first post or mail after the receipt thereof, under covers, respectively directed to the proper officer or officers to whom the said writs shall be respectively directed, and to no other person whomsoever, accompanied with proper directions to the postmaster, or deputy postmaster of the town or place, or nearest to the town or place where such officer or officers shall hold his or their office, requiring such postmaster or deputy postmaster forthwith to carry such writs respectively to such office, and to deliver the same there to such officer or officers to whom the same shall be respectively directed, or to his or their deputy or deputies who are hereby respectively required to give to such postmaster or deputy postmaster a memorandum in writing, under his or their hand or hands, acknowledging the receipt of every such writ, and setting forth the day and hour the same was delivered by such postmaster or deputy postmaster, which memorandum shall also be signed by such postmaster or deputy postmaster, who are hereby required to transmit the same by the first or second post afterwards, to the said postmaster or postmasters general, or their respective deputies at the said General Post Office in London, who are hereby required to make an entry thereof in a proper book for that purpose, and to file and keep such memorandum along with the duplicate of the said acknowledgment, signed by the said messenger as aforesaid, to the intent that the same may be inspected or produced upon all proper occasions, by any person interested in such elections.

Sheriff, &c.
to give notice to post-
masters general of place
where they shall hold
their offices.

II. And, that the said postmasters general may be duly informed where such officers to whom such writs shall be respectively directed, hold their respective offices for the purposes aforesaid, be it further enacted by the authority aforesaid, that the chancellor of the county palatine of Lancaster, the Lord Bishop of Durham, or his temporal chancellor of the county palatine of Durham, the chamberlain of the county palatine of Chester, the warden of the cinque ports, the sheriffs and stewarts of the several cities, counties and stewartries, and all other persons to whom such writs for the election of members to serve in Parliament, ought to be and are usually directed, or their respective lieutenants or deputies, shall, within one month after the passing of this act, severally send up to the said postmasters general an account of the city, town or place where they shall hold their respective offices for the purpose aforesaid, specifying in such account such particulars as shall be necessary to ascertain the particular situation of such re-

spective offices, and so from time to time, with all convenient speed, as often as the places for holding such offices shall be changed; and also an account of such general post town or place as shall be nearest to such offices respectively, in case such respective offices shall not be in any general post town or place; and the said postmasters general shall make or cause to be made a list of such places, and cause the same to be hung up and kept in some public place in the general post office aforesaid.

III. Provided always, and be it further enacted, that in all cases where any such sheriff or other person to whom such writs ought to be directed, shall hold his office within the cities of London or Westminster, or the borough of Southwark, or within five miles thereof, such sheriff or officer shall send such account as aforesaid of the place where he shall hold such office, to the messenger of the great seal, instead of the said postmaster general; and the said messenger or his deputy shall carry all such writs to such office, in like manner as is hereinbefore directed in the case of the sheriffs of London and Middlesex.

Where sheriffs hold office in or near capital, such notice sent to messenger of great seal.

IV. And whereas certain profits now arise to the messenger of the great seal, from allowances made to him under the head of mileage, for the conveyance of such writs, which allowances are paid him from the hanaper office; be it further enacted, that such allowances shall not be taken away or any ways affected by this act, during the life of the present messenger of the great seal; but shall after his decease utterly cease and determine; saving and excepting an allowance of two guineas on each writ for the election of a member to serve in Parliament on any vacancy, and of the sum of fifty pounds on the calling of a new Parliament; which allowances shall be paid to every messenger of the great seal to be hereafter appointed, from the hanaper office, in like manner as the present allowances for mileage are now paid.

Certain profits retained during life of present messenger.

V. And whereas the messenger of the great seal and his deputy have from time to time received certain other fees for the conveyance and upon the delivery of writs for the election of members to serve in Parliament; be it enacted, that all such fees shall utterly cease and determine from the passing of this act; and that neither the said messenger, nor his deputy, nor any other person, shall receive or take any fee, reward or gratuity whatsoever, for the conveyance or delivery of any such writ; and that the lords commissioners of his Majesty's treasury shall direct the annual sum

520*l.* annually paid messenger for life, in lieu of certain fees.

of five hundred and twenty pounds to be paid out of the consolidated fund to the present messenger of the great seal during the continuance of his life, in compensation for all such fees.

Neglecting
to deliver
writ.

VI. And be it further enacted, that every person concerned in the transmitting or delivery of any such writ as aforesaid, who shall wilfully neglect or delay to deliver or transmit any such writ, or accept any fee, or do any other matter or thing in violation of this act, shall be guilty of a misdemeanor, and may, upon any conviction upon any indictment or information in his Majesty's Court of King's Bench, be fined and imprisoned at the discretion of the court for such misdemeanor.

Misde-
meanor

Offences in
Scotland how
punished.

VII. And be it enacted, that every person who shall commit in Scotland any offence against this act, which is hereby declared to be a misdemeanor, shall be liable to be punished by a fine or imprisonment, as the judge or judges before whom such offender shall be tried and convicted may direct.

2 WM. 4, c. 45.

An Act to amend the Representation of the People in England and Wales. [7th June, 1832].

Description
of the re-
turning offi-
cers for the
new bo-
roughs.

XI. And be it enacted, That the persons respectively described in the said schedules (C) and (D) shall be the returning officers at all elections of a member or members to serve in Parliament for the boroughs in conjunction with which such persons are respectively mentioned in the said schedules (C) and (D); and that for those boroughs in the said schedules for which no persons are mentioned in such schedules as returning officers the sheriff for the time being of the county in which such boroughs are respectively situate shall, within two months after the passing of this act, and in every succeeding respective year in the month of March, by writing under his hand, to be delivered to the clerk of the peace of the county within one week, and to be by such clerk of the peace filed and preserved with the records of his office, nominate and appoint for each of such boroughs a fit person, being resident therein, to be, and such person so nominated and appointed shall accordingly be, the returning officer for each of such boroughs respectively until the nomination to be made in the succeeding

March; and in the event of the death of any such person, or of his becoming incapable to act by reason of sickness or other sufficient impediment, the sheriff for the time being shall on notice thereof forthwith nominate and appoint in his stead a fit person, being so resident as aforesaid, to be, and such person so nominated and appointed shall accordingly be, the returning officer for such borough for the remainder of the then current year; and no person, having been so nominated and appointed as returning officer for any borough, shall after the expiration of his office be compellable at any time thereafter to serve again in the said office for the same borough: Who disqualified. Provided always, that no person being in holy orders, nor any churchwarden or overseer of the poor within any such borough, shall be nominated or appointed as such returning officer for the same; and that no person nominated and appointed as returning officer for any borough now sending or hereafter to send members to Parliament shall be appointed a churchwarden or overseer of the poor therein during the time for which he shall be such returning officer: Who exempt. Provided also, that no person qualified to be elected to serve as a member in Parliament shall be compellable to serve as returning officer for any borough for which he shall have been nominated and appointed by the sheriff as aforesaid if within one week after he shall have received notice of his nomination and appointment as returning officer he shall make oath of such qualification before any justice of the peace, and shall forthwith notify the same to the sheriff: Proviso. Provided also, that in case his Majesty shall be pleased to grant his royal charter of incorporation to any of the boroughs named in the said schedules (C) and (D) which are not now incorporated, and shall by such charter give power to elect a mayor or other chief municipal officer for any such borough, then and in every such case such mayor or other chief municipal officer for the time being shall be the only returning officer for such borough; and the provisions hereinbefore contained with regard to the nomination and appointment of a returning officer for such borough shall thenceforth cease and determine.

LXIII. And be it enacted, That the respective counties in England and Wales, and the respective ridings, parts, and divisions of counties, shall be divided into convenient districts for polling, and in each district shall be appointed a convenient place for taking the poll at all elections of a knight or knights of the shire to serve in any future Parliament, and such districts and places for taking the poll shall Counties to be divided into districts for polling.

be settled and appointed by the act to be passed in this present Parliament for the purpose of settling and describing the divisions of the counties enumerated in the schedule marked (F) to this act annexed; provided that no county, nor any riding, parts, or division of a county, shall have more than fifteen districts and respective places appointed for taking the poll for such county, riding, parts, or division.

As to booths at the polling places for counties.

LXIV. And be it enacted, That at every contested election for any county, or riding, parts, or division of a county, the sheriff, under sheriff, or sheriff's deputy shall, if required thereto by or on behalf of any candidate, on the day fixed for the election, and, if not so required, may, if it shall appear to him expedient, cause to be erected a reasonable number of booths for taking the poll at the principal place of election, and also at each of the polling places so to be appointed as aforesaid, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the several parishes, townships, and places for which such booth is respectively allotted; and no person shall be admitted to vote at any such election in respect of any property situate in any parish, township, or place, except at the booth so allotted for such parish, township, or place, and if no booth shall be so allotted for the same, then at any of the booths for the same district; and in case any parish, township, or place shall happen not to be included in any of the districts to be appointed, the votes in respect of property situate in any parish, township, or place so omitted shall be taken at the principal place of election for the county, or riding, parts, or division of the county, as the case may be.

No voter to poll out of the district where his property lies.

Provision as to sheriff's deputies, the custody of poll books, and final declaration of the poll for counties (a).

LXV. And be it enacted, That the sheriff shall have power to appoint deputies to preside and clerks to take the poll at the principal place of election, and also at the several places appointed for taking the poll for any county, or any riding, parts, or division of a county; and that the poll clerks employed at those several places shall, at the close of each day's poll enclose and seal their several books, and shall publicly deliver them, so enclosed and sealed, to the sheriff, under sheriff, or sheriff's deputy presiding at such poll, who shall give a receipt for the same, and shall, on the commencement of the poll on the second day, deliver them back, so enclosed and sealed, to the persons from whom he shall have received them; and on the final close of the poll every such deputy who shall have received any

such poll books shall forthwith deliver or transmit the same, so enclosed and sealed, to the sheriff or his under sheriff, who shall receive and keep all the poll books unopened until the re-assembling of the Court on the day next but one after the close of the poll, unless such next day but one shall be Sunday, and then on the Monday following, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and shall make proclamation of the member or members chosen, not later than two o'clock in the afternoon of the said day.

LXVIII. And be it enacted, That at every contested election of a member or members to serve in any future Parliament for any city or borough in England, except the borough of Monmouth, the returning officer shall, if required thereto by or on behalf of any candidate, on the day fixed for the election, and if not so required may, if it shall appear to him expedient, cause to be erected for taking the poll at such election different booths for different parishes, districts, or parts of such city or borough, which booths may be situated either in one place or in several places, and shall be so divided and allotted into compartments as to the returning officer shall seem most convenient, so that no greater number than six hundred shall be required to poll at any one compartment; and the returning officer shall appoint a clerk to take the poll at each compartment, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the several parishes, districts, and parts for which such booth is respectively allotted; and no person shall be admitted to vote at any such election, except at the booth allotted for the parish, district, or part wherein the property may be situate in respect of which he claims to vote, or in case he does not claim to vote in respect of property, then wherein his place of abode as described in the register may be; but in case no booth shall happen to be provided for any particular parish, district, or part as aforesaid, the votes of persons voting in respect of property situate in any parish, district, or part so omitted, or having their place of abode therein, may be taken at any of the said booths, and the votes of freemen residing out of the limits of the city or borough may be taken at any of the said booths; and public notice of the situation, division, and allotment of the different booths shall be given two days before the commencement of the poll by the returning officer; and in case the booths

Polling for boroughs in England to be at several booths, not more than 600 voting at one compartment in a booth.

Each person to vote at the booth appointed for his parish or district.

If the booths are in different places, a deputy to preside at each place.

As to custody of poll books and final declaration of poll for boroughs.

shall be situated in different places, the returning officer may appoint a deputy to preside at each place; and at every such election the poll clerks at the close of each day's poll shall enclose and seal their several poll books, and shall publicly deliver them, so enclosed and sealed, to the returning officer or his deputy, who shall give a receipt for the same, and shall, on the commencement of the poll on the second day, deliver them back, so enclosed and sealed, to the persons from whom he shall have received the same; and every deputy so receiving any such poll books, on the final close of the poll, shall forthwith deliver or transmit the same, so enclosed and sealed, to the returning officer, who shall receive and keep all the poll books unopened until the following day, unless such day be Sunday, and then till the Monday following, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and make proclamation of the member or members chosen, not later than two o'clock in the afternoon of the said day: provided always, that the returning officer or his lawful deputy, may, if he think fit, declare the final state of the poll, and proceed to make the return immediately after the poll shall have been lawfully closed: provided also, that no nomination shall be made or election holden of any member for any city or borough in any church, chapel, or other place of public worship.

Polling districts to be appointed for Shoreham, Cricklade, Aylesbury, and East Retford.

LXIX. Provided always, and be it enacted, That so far as relates to the several boroughs, of New Shoreham, Cricklade, Aylesbury, and East Retford, as defined by this act, the said several boroughs shall be divided into convenient districts for polling, and there shall be appointed in each district a convenient place for taking the poll at all elections of members to serve in any future Parliament for each of the said boroughs, which districts and places for taking the poll shall be settled and appointed by an act to be passed in this present Parliament.

When returning officers may close the poll before the expiration of the time fixed.

LXX. And be it enacted, That nothing in this act contained shall prevent any sheriff or other returning officer, or the lawful deputy of any returning officer, from closing the poll previous to the expiration of the time fixed by this act, in any case where the same might have been lawfully closed before the passing of this act; and that where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, the sheriff or other returning officer, or the lawful deputy of any returning officer, shall

not for such cause finally close the poll, but, in case the proceedings shall be so interrupted or obstructed at any particular polling place or places, shall adjourn the poll at such place or places only until the following day, and if necessary shall further adjourn the same until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed to take the poll at such place or places; and any day whereon the poll shall have been so adjourned shall not, as to such place or places, be reckoned one of the two days of polling at such election within the meaning of this act; and wherever the poll shall have been so adjourned by any deputy, of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and delivered or transmitted to such sheriff or other returning officer; any thing hereinbefore contained to the contrary notwithstanding.

Adjournment of poll in case of riot.

LXXI. And be it enacted, That from and after the end of this present Parliament all booths erected for the convenience of taking polls shall be erected at the joint and equal expence of the several candidates, and the same shall be erected by contract with the candidates, if they shall think fit to make such contract, or if they shall not make such contract, then the same shall be erected by the sheriff or other returning officer at the expence of the several candidates as aforesaid, subject to such limitation as is hereinafter next mentioned; (that is to say,) that the expence to be incurred for the booth or booths to be erected at the principal place of election for any county, riding, parts, or division of a county, or at any of the polling places so to be appointed as aforesaid, shall not exceed the sum of forty pounds in respect of any one such principal place of election or any one such polling place; and that the expence to be incurred for any booth or booths to be erected for any parish, district, or part of any city or borough shall not exceed the sum of twenty-five pounds in respect of any one such parish, district, or part; and that all deputies appointed by the sheriff or other returning officer shall be paid each two guineas by the day, and all clerks employed in taking the poll shall be paid each one guinea by the day, at the expence of the candidates at such election: provided always, that if any person shall be proposed without his consent, then the

Candidates, or persons proposing a candidate without his consent, to be at the expence of booths and poll clerks.

Limitation of expence.

Houses may be hired for polling in, instead of booths.

person so proposing him shall be liable to defray his share of the said expences in like manner as if he had been a candidate; provided also, that the sheriff or returning officer may, if he shall think fit, instead of erecting such booth or booths as aforesaid, procure or hire and use any houses or other buildings for the purpose of taking the poll therein, subject always to the same regulations, provisions, liabilities, and limitations of expence as are hereinbefore mentioned with regard to booths for taking the poll.

Certified copies of the register of voters for each booth.

LXXII. And be it enacted, That the sheriff or other returning officer shall, before the day fixed for the election, cause to be made, for the use of each booth or other polling place at such election, a true copy of the register of voters, and shall under his hand certify every such copy to be true.

Powers of deputies of returning officers.

LXXIII. And be it enacted, that every deputy of a sheriff or other returning officer shall have the same power of administering the oaths and affirmations required by law, and of appointing commissioners for administering such oaths and affirmations as may by law be administered by commissioners, as the sheriff or other returning officer has by virtue of this or any other act, and subject to the same regulations and provisions in every respect as such sheriff or other returning officer.

Regulations respecting polling, &c. for the borough of Monmouth, and for the contributory boroughs in Wales.

LXXIV. And be it enacted, That from and after the end of this present Parliament, every person who shall have a right to vote in the election of a member for the borough of Monmouth, in respect of the towns of Newport or Usk, shall give his vote at Newport or Usk respectively before the deputy for each of such towns, whom the returning officer of the borough of Monmouth is hereby authorized and required to appoint; and every person who shall have a right to vote in the election of a member for any shire-town or borough, in respect of any place named in the first column of the schedule marked (E) to this act annexed, shall give his vote at such place before the deputy for such place whom the returning officer of the shire-town or borough is hereby authorized and required to appoint: and every person who shall have a right to vote in the election of a member for the borough composed of the towns of Swansea, Loughor, Neath, Aberavon, and Kenfig shall give his vote at the town in respect of which he shall be entitled to vote, (that is say), at Swansea before the portreeve of Swansea, and at each of the other towns before the deputy of such town whom the said portreeve is hereby authorized and required to appoint; and at every contested election for

the borough of Monmouth, or for any shire-town or borough named in the second column of the said schedule (E), or for the borough composed of the said five towns, or for the borough of Brecon, the polling shall commence on the day next after the day fixed for the respective election, unless such next day be Saturday or Sunday, and then on the Monday following, as well at Monmouth as at Newport and Usk respectively, and as well at the shire-town or borough as at each of the places sharing in the election therewith respectively, and as well at Swansea as at each of the four other towns respectively; and such polling shall continue for two days only, such two days being successive days, (that is to say), for seven hours on the first day of polling, and for eight hours on the second day of polling, and that the poll shall on no account be kept open later than four o'clock in the afternoon of such second day; and the returning officer of the borough of Monmouth shall give to the deputies for Newport and Usk respectively, and the returning officer of every shire-town or borough named in the second column of the said schedule (E), shall give to the deputy for each of the places sharing in the election for such shire-town or borough, notice of the day fixed for such respective election, and shall before the day fixed for such respective election cause to be made, and to be delivered to every such deputy, a true copy of the register of voters for the borough of Monmouth, or for such shire-town or borough, as the case may be, and shall under his hand certify every such copy to be true; and the portreeve of the town of Swansea shall give notice of the day of election to the deputy for each of the towns of Loughor, Neath, Aberavon, and Kenfig, and shall in like manner cause to be made, and to be delivered to every such deputy, a true and certified copy of the register of voters for the borough composed of the said five towns; and the respective deputies for Newport and Usk, and for the respective places named in the first column of the said schedule (E), as well as for the towns of Loughor, Neath, Aberavon, and Kenfig, shall respectively take and conduct the poll, and deliver or transmit the poll books, in the same manner as the deputies of the returning officers of the cities and boroughs in England are hereinbefore directed to do, and shall have the same powers and perform the same duties in every respect as are respectively conferred and imposed on the said deputies by this act: provided always, that where there shall be a mayor, port-

As to appointment of deputies in Wales.

reeve, or other chief municipal officer in any town or place for which the returning officer or the portreeve of Swansea is required to appoint a deputy as aforesaid, such returning officer or the portreeve of Swansea as the case may be, is hereby required to appoint such chief municipal officer for the time being to be such deputy for such town or place.

All election laws to remain in force, except where superseded by this act.

LXXV. And be it enacted, that all laws, statutes, and usages now in force respecting the election of members to serve in Parliament for that part of the United Kingdom called England and Wales shall be and remain, and are hereby declared to be and remain, in full force, and shall apply to the election of members to serve in Parliament for all the counties, ridings, parts, and divisions of counties, cities and boroughs, hereby empowered to return members, as fully and effectually as if the same respectively had heretofore returned members, except so far as any of the said laws, statutes, or usages are repealed or altered by this act, or are inconsistent with the provisions thereof.

Penalties on officers for breach of duty.

LXXVI. And be it enacted, that if any sheriff, returning officer, barrister, overseer, or any person whatsoever shall wilfully contravene or disobey the provisions of this act or any of them, with respect to any matter or thing which such sheriff returning officer, barrister, overseer, or other person is hereby required to do, he shall for such his offence be liable to be sued in an action of debt in any of his Majesty's Courts of Record at Westminster for the penal sum of five hundred pounds, and the jury before whom such action shall be tried may find their verdict for the full sum of five hundred pounds, or for any less sum which the said jury shall think it just that he should pay for such his offence; and the defendant in such action, being convicted, shall pay such penal sum so awarded, with full costs of suit to the party who may sue for the same: provided always, that no such action shall be brought except by a person being an elector or claiming to be an elector, or a candidate, or a member actually returned, or other party aggrieved: provided also, that the remedy hereby given against the returning officer shall not be construed to supersede any remedy or action against him according to the law now in force.

SCHEDULE (C).

Principal Places to be Boroughs.	Returning Officers.
Manchester (Lancashire) {	The Boroughreeve and Constables of Manchester. The Two Bailiffs of Birmingham. The Mayor of Leeds.
Birmingham (Warwickshire)	
Leeds (Yorkshire) - - -	
Greenwich (Kent)	The Master Cutler.
Sheffield (Yorkshire) - -	
Sunderland (Durham)	
Devonport (Devonshire)	Constable of the Manor of the Deanery of Wolverhampton.
Wolverhampton (Staffordshire) {	
Tower Hamlets (Middlesex)	
Finsbury (Middlesex)	
Mary-le-bone (Middlesex)	
Lambeth (Surrey)	
Bolton (Lancashire) - {	The Boroughreeves of Great and Little Bolton.
Bradford (Yorkshire)	
Blackburn (Lancashire)	
Brighton (Sussex)	
Halifax (Yorkshire)	The Mayor of Macclesfield.
Macclesfield (Cheshire) - -	
Oldham (Lancashire)	The Mayor of Stockport.
Stockport (Cheshire) - - -	
Stoke-upon-Trent (Staffordshire)	
Stroud (Gloucestershire)	

SCHEDULE (D).

Principal Places to be Boroughs.	Returning Officers.
Ashton-under-Lyne (Lancashire)	The Mayor of Ashton-under-Lyne.
Bury (Lancashire)	
Chatham (Kent)	
Cheltenham (Gloucestershire)	The High Bailiff of Kidderminster. The Mayor of Kendal.
Dudley (Worcestershire)	
Frome (Somersetshire)	
Gateshead (Durham)	
Huddersfield (Yorkshire)	
Kidderminster (Worcestershire)	
Kendal (Westmoreland) - -	The Boroughreeve of Salford.
Rochdale (Lancashire)	
Salford (Lancashire) - - -	
South Shields (Durham)	The Mayor of Walsall.
Tynemouth (Northumberland)	
Wakefield (Yorkshire)	
Walsall (Staffordshire) - - -	
Warrington (Lancashire)	
Whitby (Yorkshire)	
Whitehaven (Cumberland)	
Merthyr Tydvil (Glamorganshire)	

SCHEDULE (E.)

Places sharing in the Election of Members.		Shire-towns or principal boroughs.	County in which such boroughs are situated.
Amlwch,	} sharing with	Beaumaris	Anglesey.
Holyhead, and			
Llangefni			
Aberystwith,	} sharing with	Cardigan	Cardiganshire.
Lampeter, and			
Adpar			
Llanelly	} sharing with	Caernarthen	Caernarthenshire.
Pwllheli			
Nevin			
Conway	} sharing with	Caernarvon	Caernarvonshire.
Bangor			
Criccieth			
Ruthin	} sharing with	Denbigh	Denbighshire.
Holt			
Town of Wrexham			
Rhyddlan	} sharing with	Flint	Flintshire.
Overton			
Caerwis			
Caergwrley	} sharing with	Cardiff	Glamorganshire.
St. Asaph			
Holywell			
Mold	} sharing with	Montgomery	Montgomeryshire.
Cowbridge			
Llantrissant			
Llanidloes	} sharing with	Haverfordwest	Pembrokeshire.
Welsh Pool			
Machynlleth			
Llanfyllin	} sharing with	Pembroke	Pembrokeshire.
Newtown			
Narberth			
Fishguard	} sharing with	Radnor	Radnorshire.
Tenby			
Wiston			
Town of Milford	} sharing with		
Knighton			
Rhayder			
Kevinleece	} sharing with		
Knucklas			
Town of Presteigne			

SCHEDULE (E 2).

Places sharing in the Election of Members.	Places therein from which the Seven Miles are to be calculated.
Newport - -	The Market Place.
Usk - -	The Town Hall.
Aberystwith - -	The Bridge over the Rheidal.
Lampeter - -	The Parish Church.
Adpar - -	The Bridge over the Teivi.
Pwllheli - -	The Guildhall.
Nevin - -	The Parish Church.
Conway - -	The Parish Church.
Criccieth - -	The Castle.
Ruthin - -	The Parish Church called St. Peter's.
Holt - -	The Parish Church.
Rbyddlan - -	The Parish Church.
Overton - -	The Parish Church.
Caerwis - -	The Parish Church.
Caergwriley - -	The Parish Church of Hope.
Cowbridge - -	The Town Hall.
Llantrissant - -	The Town Hall.
Tenby - -	The Parish Church.
Wiston - -	The Parish Church.
Knighton - -	The Parish Church.
Rhayder - -	The Market Place.
Kevinleece - -	The Parish Church.
Knucklas - -	The Site of the ancient Castle of Cnweglas.
Swansea - -	The Town Hall.
Loughor - -	The Parish Church.
Neath - -	The Town Hall.
Aberavon - -	The Bridge over the Avon.
Ken-fig - -	The Parish Church of Lower Ken fig.

2 & 3 Wm. 4, c. 65.

An Act to Amend the Representation of the People in Scotland.
[17th July, 1832.]

Registered
voters only
to be allowed
to vote.

Limitation
of inquiry at
elections.

XXVI. And be it enacted, that in all elections after the end of this present Parliament, every qualified person whose name shall appear in the last corrected register, and none other, shall be entitled to vote; and it shall not be competent to inquire on that occasion into any other facts except those of the party tendering the vote being truly the individual mentioned in the said register, of his being still possessed of the qualification there recorded, on his own account, and not in trust for or at the pleasure of any other person, and of his not having previously voted at that election: Provided always, that the inquiry into these facts shall, on this occasion, be confined to the putting to the person so tendering his vote, if the sheriff shall be required so to do on behalf of any candidate, an oath, or, if he be a Quaker or Moravian, a solemn affirmation, in the form of the schedule (I) to this act annexed; and it shall not be competent at any such poll or election to put to any registered voter any other oath or affirmation whatsoever, except only an oath or affirmation against bribery, which, if required on the part of any candidate, shall then be put by the sheriff in the form of schedule (K) to this act annexed (a): Provided always, that any person who has claimed to be registered, but whose claim has been rejected by the sheriff or Court of Review, may, notwithstanding, tender his vote at any election where such register is in force, and the sheriff or his substitute shall enter any vote so tendered, with the name of the person for whom it is given, distinguishing the same from the votes given by persons on the register, so that it may be in the power of any election committee to give effect to such vote in deciding upon the validity of any disputed election; but no scrutiny shall be allowed by or before any returning officer with regard to any votes given or tendered at any such election.

Sheriffs shall
divide their

XXVII. And be it enacted, that within three months after the passing of this act each sheriff shall divide his

(a) See 17 & 18 Vict. c. 102.

county into convenient districts for polling, following, as nearly as possible, the boundaries of parishes, baronies, or other known subdivisions, and shall appoint a particular polling place for each such district, which place shall be selected so as to be most accessible to the voters in the district; and such polling places shall in no case be more in number than fifteen for any one county, and shall be so arranged as that no more than six hundred persons or thereabouts shall poll at any election at any one place; and each town clerk shall, in like manner, appoint one polling place in every city, burgh, or town of which he is clerk, in which the number of voters does not exceed six hundred or thereabouts, and shall, wherever the number of registered voters in any such city, burgh, or town shall exceed six hundred or thereby, divide the said city, burgh, or town into convenient districts, and appoint a convenient polling place in each such district, so as that no more than about six hundred persons shall poll at any election at any such place; and each sheriff clerk shall, within fourteen days after the sheriff has so divided his county into districts for polling, make up a distinct list of the said districts and the polling place appointed in each, and shall cause copies of the said lists to be affixed to the doors of all the country parish churches in his county; and each town clerk shall, within the same period, affix lists of the polling place or polling places within his burgh to all the church doors within the same; and every voter shall poll at the polling place of the district within which the premises, or any part of them, in respect of which he claims to vote may be situate, except only where such polling place shall be in an island distant more than ten miles from the mainland of any county, in which case the voters not resident in such island may poll at the polling place for the district in which the county town is included: Provided always, that with respect to the contiguous burghs of Anstruther East, Anstruther West, and Kilrenny, the town clerk of Anstruther East shall appoint one polling place within the said burgh of Anstruther East for the whole of the said three burghs, which place shall be notified in manner herein provided, and all the voters in the said three burghs shall poll at the polling place so appointed; and at any contested election the sheriff shall, if required by any of the candidates, direct two or more booths, or halls, rooms, or other places for polling, to be provided at each polling place; and all polls shall be taken, both at elections for shires, and for cities, burghs, and

counties into districts for polling, and appoint polling places.

Town clerks shall appoint polling places in cities and burghs.

Voters to poll in the district where the property which gives the qualification lies.

Proviso as to certain burghs.

Regulations respecting contested elections.

towns, under the superintendence of the sheriff, or of a substitute or substitutes named by him, which substitutes the sheriff is hereby empowered to name at his own discretion, without observing the forms necessary in the appointment of ordinary substitutes receiving salaries; and each substitute so superintending a polling place shall have the assistance of a clerk or of clerks, to be appointed by the sheriff, with the concurrence of the candidates, if they can agree, and by the sheriff clerk of the county in case of their not agreeing; and each poll clerk shall have with him at the polling place an authenticated copy of the register for that district of the shire, or of the city, burgh, or town, or cities, burghs, or towns, attached to each such polling place, entitled to share in the election within the said shire, as the case may be, alphabetically arranged as herein directed, according to which copy the votes shall be taken.

Writs to be addressed to sheriffs, who shall fix and notify day of election.

XXVIII. And be it enacted, that writs for the election of members to serve for shires, or for any city, burgh, or town entitled to send a member or members for itself, shall be directed as heretofore to the sheriff of the shire; and where the election is for a district of cities, burghs, or towns, a writ shall be directed to the sheriff specified in schedule (L) hereunto annexed, and shall be proclaimed, as hereinafter directed, at the town specified in the said schedule (L) for each of the said districts respectively; and each sheriff shall endorse on the back of the writ the day on which he received it, and shall within three days thereafter announce a day or days, which day or days shall (except only in the case of Orkney as hereinafter provided) not be less than ten nor more than sixteen days after that on which the writ was received, for the election or elections within his shire, and shall give due intimation thereof by printed or written notices affixed on the doors of all the parish churches (except as hereinafter excepted) within the county, when the election is for a county and of all the parish churches in the city, burgh, or town, or cities, burghs, or towns, when the election is for a town or district of towns, and also, where he thinks this expedient, by advertisement in the newspaper or newspapers of greatest circulation in the county or district.

Order of proceedings at elections for counties.

XXIX. And be it enacted, that on the day named by the sheriff for the election for the shire the sheriff shall repair to the market cross or some other convenient and open place in or immediately adjoining the county town, and shall there publicly proclaim the writ by reading it; pro-

vided always that the writ for the united counties of Clackmannan and Kinross shall be proclaimed at the town of Dollar; and that the writ for the united counties of Elgin and Nairn shall be proclaimed at the town of Forres; and that the writ for the united counties of Ross and Cromarty shall be proclaimed at the town of Dingwall; and if no more than one candidate shall at the time of such proclamation be proposed for the choice of the electors, he shall, upon a show of hands, forthwith declare the person so put in nomination to be duly elected; but if more candidates shall be proposed, and a poll is demanded, the proceedings shall be adjourned for a period to be named by the sheriff, but not exceeding two free days, exclusive of Saturdays and Sundays, and the polling shall commence at the places previously intimated, at nine of the clock of the day that shall be named.

XXX. And be it enacted, that where the election shall be for any city, burgh, or town, or district of cities, burghs, or towns, the sheriff to whom, as hereinbefore directed, the writ shall have been addressed, shall, on the day and hour previously named by him for such election, repair to the market cross or some other convenient and open place in or immediately adjoining any town or burgh sending a member by itself, or that town or any district at which, as hereinbefore directed, the writ for the whole district is to be proclaimed, and shall there publicly proclaim the writ by reading it and if no more candidates shall be proposed for the choice of the electors than there are vacancies to be filled up, he shall declare the person or persons put in nomination to be duly elected, on a show of hands; it being always competent for any registered voter residing or having his qualification in any other city, burgh or town of the district to repair to the place where the writ is thus proclaimed, and to put any person in nomination, provided that voter shall first satisfy the sheriff that he is truly registered, by producing an extract of his registration, and by taking, if required, the oath in schedule (I) annexed; but if more candidates shall be proposed than there are vacancies to be filled up, and a poll shall be demanded, the proceedings shall be adjourned for not more than three free days, exclusive of Saturdays and Sundays: provided always, that in the district including the town of Kirkwall in Orkney the adjournment may be made for any period not exceeding seven free days; and the sheriff who proclaimed the writ, having thus fixed one particular day on which the polls are to take place in all

Order of proceedings at elections for cities, burghs, and towns.

the burghs of the district, shall forthwith send a written notice to each sheriff within whose shire any city, burgh, or town of the district is situate, that a poll has been demanded, and also of the day on which it is to begin; and each such sheriff shall accordingly appoint such a number of substitutes and clerks as may be necessary to assist or officiate as before provided at each of the polling places provided in any of the cities, burghs, or towns of such districts within his county; and the polling shall begin at each such polling place at nine of the clock of the day so appointed, and shall proceed thereafter as hereinafter provided.

Extension of
time for re-
turn of writ
for the elec-
tion of a
member for
Orkney.

XXXI. And in respect of the remote situation of certain parts of the county of Orkney and Shetland, and the occasional difficulty of communication therewith, be it enacted, that the sheriff of Orkney to whom the writ for the election of a member for the said county shall be addressed at Kirkwall shall, within twenty-four hours after receiving the same, issue a precept to the sheriff substitute in Shetland, fixing a day for the election for the said county, which day shall not be less than twelve nor more than sixteen days after that on which the writ was received, and shall forward or transmit the said precept, with the least possible delay, directly to the said sheriff substitute in Shetland, who, immediately on receipt thereof, shall announce the day of election by notices on the church doors, and if on the day of election more candidates than one shall be put in nomination, and a poll shall be demanded, the sheriff shall then adjourn the proceedings for a period of not less than ten or more than fourteen days, and shall within twenty-four hours dispatch notice of this adjournment to the sheriff substitute of Shetland, as in the case above provided for; and the polling shall commence accordingly at the different polling places in both parts of the county on the day to which the proceedings are adjourned, and shall proceed as hereinafter directed, as in other cases of polling.

Polls only to
be kept open
two days (a).

Order and
manner of
polling.

XXXII. And be it enacted, that no poll at any election, either for a county, or a city, burgh, or town, or district of cities, burghs, or towns, shall be directed to begin on a Saturday, or shall be kept open for more than two consecutive days, and that only between the hours of nine in the morning and four in the afternoon for the first day, and

between the hours of eight in the morning and four of the afternoon for the second day : provided always, that the poll at any one place may be closed before the termination of the said two days if all the candidates or their agents and the sheriff shall agree in so closing it : provided also, that where the proceedings at any election shall be obstructed by any riot or open violence, the sheriff, or his substitute at the place where the riot has occurred, may adjourn the poll at that place to the following day or some other convenient time, and if necessary may repeat such adjournment till such obstruction shall have ceased, he always giving notice to the sheriff who is to make the return of such adjournment having been made ; and any day where the poll shall have been so adjourned at any polling places shall not be reckoned one of the two days of polling within the meaning of this act, nor shall the state of the poll be finally declared, nor the result of the election proclaimed, until the poll so interrupted shall be closed and transmitted, as hereinbefore provided, to the sheriff who is to make the return ; and each sheriff in charge of each polling place shall take care that the attending clerk at the place has with him a certified copy of the aforesaid alphabetical register, and shall receive the votes of all persons then qualified to vote according to the provisions of this act, and shall record and progressively number each vote for each candidate in a poll book, and he and the clerk shall subscribe their names to each page of the said book before making or allowing to be made any entry in the succeeding page ; and the poll book or books shall at the close of the first day's polling be publicly sealed up by the said acting sheriff and poll clerk, and be taken charge of by the said sheriff, and on the commencement of the poll of the second day he shall publicly break the seals, and then proceed as formerly ; and immediately after the poll at his polling place is finally closed, the officiating sheriff shall forthwith seal up and transmit or deliver the said poll books to the sheriff acting as the returning officer for the shire.

XXXIII. And be it enacted, that the sheriff to whom the said poll books have been transmitted or delivered shall on the day next but one after the close of the poll (unless such day shall be Sunday, and then on the Monday following,) openly break the seals of the said poll books, and cast up the number of votes as they appear on the said several books, and shall openly declare the state and result of the poll, and make proclamation of the member or members

Sheriff to
make return,
&c. for
counties.

chosen, not later than two of the clock of the afternoon of the said day, and shall forthwith make a return in the form presently used (as nearly as may be), in terms of the writ, under his hand and seal, to the clerk of the Crown in England; and if the votes shall be equal, he shall make a double return.

Returns for
burghs, &c.

XXXIV. And be it enacted, that where the election is for one city, burgh, or town sending a member or two members by itself, or for a district of towns lying wholly within one shire, the said poll books shall be transmitted to and the return made by the sheriff of the shire within which such city, burgh, or town, or district shall be situate; and where the election shall be for a district or set of burghs or towns lying in different shires, the said poll books shall be severally transmitted in the first instance to the sheriffs of the several shires within which any of the said burghs or towns shall be situate, and thereafter the other sheriff shall transmit the said poll books to the sheriff to whom, as herein provided, the writ shall have been directed, by whom the votes shall be summed up, and the result declared, and the return of the person or persons duly elected shall be made, as above, to the clerk of the Crown in England.

Certain al-
lowances to
sheriffs, and
expences of
booths,
clerks, &c.
to be paid by
candidates.

XL. And be it enacted, that the monies which are now in use to be allowed to the sheriffs in their accounts with the Exchequer for executing writs for elections shall continue to be allowed to them on such accounts; and that all halls, rooms, booths or other places hired, constructed or prepared for taking the polls shall be so hired, constructed, or prepared by contract with the candidates, or, if they cannot agree, by the sheriff clerk, at their joint and equal expense: provided always, that the expense of such hiring or construction at any one polling place for a county shall not exceed the sum of thirty pounds, nor the sum of twenty pounds at any one polling place in any city, burgh, or town; and the candidates shall further be bound to pay and contribute among them to each poll clerk one guinea per day, and in like manner to contribute and pay a certain fee to each sheriff or sheriff substitute, for superintending the polls, the amount of which fee shall in no case exceed the sum of three guineas per day for each such sheriff or substitute; and the candidates, in all cases where a poll has been demanded, shall in like manner be bound to defray the necessary expenses incurred by the sheriff or sheriff clerks or town clerks in the transmission of precepts, intima-

tions, poll books, or other communications required or enjoined by this act; and if any person shall be proposed as a candidate without his consent, the person so proposing him shall be liable to defray his share of all these expenses in like manner as if he had been a candidate himself.

SCHEDULE (I).

I, A. B., do solemnly swear [*or affirm*], that I am the individual described in the register for as A. B. of [*here insert description in the same words as contained in the register*]; that I am still the proprietor [*or occupant*] of the property for which I am so registered, and hold the same for my own benefit, and not in trust for or at the pleasure of any other person; and that I have not already voted at this election.

SCHEDULE (L).

Towns where the Writ for Districts is to be proclaimed.	Sheriffs to whom the Writ is to be addressed.
Leith, for the district to which it belongs - -	Sheriff of Edinburgh,
Wick, for the district to which it belongs - -	Sheriff of Caithness.
Inverness, for the district to which it belongs -	Sheriff of Inverness.
Elgin, for the district to which it belongs - - {	Sheriff of Elgin and Moray.
Montrose, for the district to which it belongs -	Sheriff of Forfar.
Saint Andrew's, for the district to which it belongs -	Sheriff of Fife.
Kirkcaldy, for the district to which it belongs -	Sheriff of Fife.
Stirling, for the district to which it belongs - -	Sheriff of Stirling.
Kilmarnock, for the district to which it belongs -	Sheriff of Ayr.
Haddington, for the district to which it belongs -	Sheriff of Haddington.
Dumfries, for the district to which it belongs -	Sheriff of Dumfries.
Wigton, for the district to which it belongs -	Sheriff of Wigton.
Ayr, for the district to which it belongs - -	Sheriff of Ayr.
Falkirk, for the district to which it belongs - -	Sheriff of Stirling.

5 & 6 Wm. 4, c. 36.

An Act to limit the time of taking the Poll in Boroughs at contested Elections of Members to serve in Parliament to one Day.
[25th August, 1835.]

2 & 3 Wm. 4,
c. 45.

So much of
recited act
as allows the
poll to be
kept open
two days
repealed.

Period of
polling.

Whereas it would tend to promote the purity of elections and the diminution of expence if the poll at all contested elections of members to serve in Parliament for cities, boroughs, and towns, or for counties of cities or counties of towns, were taken in one day: and whereas by an act passed in the second year of the reign of his present Majesty King William the Fourth, intituled "An Act to amend the Representation of the People in England and Wales," it is among other things enacted, that such poll may remain open during the space of two days: and whereas it is expedient to repeal that part of the said recited act which allows the poll so to continue open during the space of two days: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act such part of the said recited act as allows the poll to continue open during two days in cities, boroughs, and towns, or in counties of cities or counties of towns, be repealed, and the same is hereby repealed.

II. And be it further enacted, that at every contested election of a member or members to serve in Parliament for any city, borough, or town, or county of a city or county of a town, the polling shall commence at eight of the clock in the forenoon of the day next following the day fixed for the election; and the polling shall continue during such one day only; and no poll shall be kept open later than four of the clock in the afternoon: provided always, that when such day next following the day fixed for the election shall be Sunday, Good Friday, or Christmas Day, then in the case it be Sunday the poll shall be on the Monday next following; and in the case it be Good Friday, then on the Saturday

next following; and in the case it be Christmas Day, then on the next following day, if the same shall not be Sunday, and if it be Sunday, on the next following Monday.

III. And be it further enacted, that the polling booths or compartments at each polling place shall be so divided and arranged by the sheriff or other returning officer that not more than three hundred electors shall be allotted to poll in each such booth or compartment. 300 voters only to poll in one booth.

IV. And be it further enacted, that on the requisition of any candidate, or of any elector being the proposer or seconder of any candidate, the booths or compartments of each polling place shall be so divided and arranged by the sheriff or other returning officer that not more than one hundred electors shall be allotted to poll in each such booth or compartment: provided always, that such candidate or elector making such requisition shall pay all expences incident upon such division or arrangement. Not more than 100 voters to poll in one booth, if so required.

V. And be it further enacted, that in case any requisition as aforesaid shall be made on or before the day fixed for the election, the sheriff or other returning officer shall forthwith give public notice of the situation of such booths, which shall be deemed to be sufficient notice, any law or statute to the contrary notwithstanding. Notice to be given of situation of booths, if required.

VI. And be it further enacted, that no elector at any election shall be required to take the oaths commonly called the oaths of allegiance, abjuration, and supremacy, nor any oath or oaths required to be taken by any act of Parliament in lieu thereof, any law or statute to the contrary notwithstanding. Oaths of allegiance, supremacy, and abjuration not to be taken.

VII. And be it further enacted, that such of the freemen of the city of London, being liverymen, as are or shall be entitled to vote in the election of members to serve in any future Parliament for the city of London in the Guildhall, and who are or shall be also entitled to vote in such election as owner or tenant of premises in such city, shall be entitled to vote at any such election at the booth or place appointed for the parish, district, or part wherein the property may be situate in respect of which he is so entitled to vote as aforesaid; and that such vote shall be entered in the poll books either as the vote of a liveryman, or as owner or tenant, as the person so voting shall direct. Liverymen of London, entitled to vote in respect of premises, may vote at the booth for the district.

VIII. And be it enacted, that where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whether such proceedings shall consist of the nomination of candidates or of the taking the poll, the Adjournment of nomination or of poll in case of riot.

sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause terminate the business of such nomination, nor finally close the poll, but shall adjourn the nomination or the taking the poll at the particular polling place or places at which such interruption or obstruction shall have happened until the following day, and, if necessary, shall further adjourn such nomination or poll, as the case may be, until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed with the business of the nomination or with the taking the poll, as the case may be, at the place or places at which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the poll shall be regulated accordingly; and any day whereon the poll shall have been so adjourned shall not as to such place or places be reckoned the day of polling at such election, within the meaning of this act; and whenever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and the poll books delivered or transmitted to such sheriff or other returning officer, anything hereinbefore or in any other statute to the contrary notwithstanding: provided always, that this act shall not be taken to authorize an adjournment to a Sunday; but that in every case in which the day to which the adjournment would otherwise be made shall happen to be a Sunday, Good Friday, or Christmas Day, that day or days shall be passed over, and the following shall be the day to which the adjournment shall be made.

IX. And be it further enacted, that nothing in this act shall be construed to apply to Ireland or to Scotland.

X. And be it further enacted, that this act may be altered, varied, or repealed by any act to be passed in this present session of Parliament.

Not to extend to Ireland, &c.

Act may be repealed, &c.

5 & 6 Wm. 4, c. 78.

An Act to explain and amend an Act passed in the Second and Third Year of the Reign of King William the Fourth, for amending the Representation of the People in Scotland and to diminish the Expences there.

[9th September, 1835.]

Whereas it is expedient that the time for fixing the day of election of members to serve in Parliament for cities, burghs, or towns in Scotland should be shortened after the receipts of the writs by the sheriff, and that the poll at such elections should be taken in one day : And whereas an act was passed in the second and third year of the reign of his present Majesty, entitled "An Act to amend the Representation of the People in Scotland," whereby it is provided that the day of election shall be not less than ten or more than sixteen days after the day on which the writ is received : Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that each sheriff to whom any writ for the election of a member or members to serve for any city, burgh, or town, or district of cities, burghs, or towns, shall be directed, under the provisions of the said recited act, shall endorse on the back of the writ the day on which he received it, and shall (except only in the cases hereinafter provided) within two days thereafter announce a day or days for the election or elections, which day or days shall (except only in the cases hereinafter provided) be not less than four nor more than ten days in cities, burghs, and towns, or districts of cities, burghs, and towns, after the day on which the writ was received, and shall give due intimation thereof as is provided in the said recited act.

2 & 3 Wm. 4.
c. 65.

Sheriff to endorse on the writ the day on which he received it, and within two days announce time for the election within ten days.

II. Provided always, and be it enacted, that in the districts comprehending Kirkwall, Wick, Dornoch, Dingwall, Tain, Cromarty, Ayr, Irvine, Campbelltown, Inverary, and Oban, the provisions of the said recited act, in so far as

Provide as to shires and districts of burghs hereinafter specified.

they relate to the announcement of the day of election, and the interval to elapse between the receipt of the writ and the proclamation thereof, shall remain in full force and effect, any thing contained in this act notwithstanding.

Sheriff may alter polling districts and polling places.

III. And be it enacted, that the sheriff may, if required by or on behalf of any candidate, or, if not so required, if it shall appear to him expedient, increase or alter the number, situation, or arrangement of the existing polling places and districts, or parts thereof, so that not more than three hundred electors shall be allotted to poll in each booth or compartment for any of the cities, burghs, or towns within his shire; and where an alteration has been made by the sheriff in the number, situation, or arrangement of the polling places in any such city, burgh, or town, the town clerk shall forthwith make up a list of the polling places, and cause copies thereof to be affixed to the doors of all the parish or town churches within such city, burgh, or town.

On requisition, sheriff to arrange booths so as not more than 100 electors shall poll in each.

IV. And be it further enacted, that on the requisition of any candidate, or of any elector being the proposer or secondor of any candidate, the booths or compartments at each polling place shall be so divided and arranged by the sheriff or his substitute duly authorized by him that not more than one hundred electors shall be allotted to poll in each such booth or compartment: Provided always, that such candidate or elector making such requisition shall pay all expences incident upon such division or arrangement.

Polls to be kept open only one day.

V. And be it enacted, that no poll at any election for any city, burgh, or town, or district of cities, burghs, or towns, shall be kept open for more than one day, and that only between the hours of eight in the morning and four in the afternoon: Provided always, that at any time after a poll has been demanded the poll at any one place may be closed if all the candidates or their agents and the sheriff or his substitute shall agree in so closing it; and after the poll shall have been closed at all the polling places the sheriff or his substitute may forthwith upon receipt of the whole poll books, and after having summed them up, make proclamation of the member or members chosen, at any hour not later than two of the clock in the afternoon, without waiting for the day appointed for the declaration: Provided also, that where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whether such proceedings shall consist of the nomination of candi-

dates or of the taking the poll, the sheriff or his substitute at the place where the riot or open violence has occurred may adjourn the nomination or the taking the poll at the particular polling place or places at which such riot or open violence shall have happened to the following day or some other convenient time, and, if necessary, may repeat such adjournment till such interruption or obstruction shall have ceased, he always giving notice to the sheriff, or his substitute who is to make the return, of such adjournment having been made; and the state of the poll shall not be finally declared, nor the result of the election proclaimed, until the poll so interrupted or obstructed shall be closed and transmitted to the sheriff or his substitute who is to make the return.

VI. And be it enacted, that where a poll takes place for a district of burghs situated in different counties the poll book shall at the final close thereof be forthwith sealed up and delivered or transmitted by the sheriffs or sheriff substitutes in charge of the polls to the sheriff appointed by the said recited act to make the return of the member for such district.

Sheriff substitutes to transmit their poll books to the sheriff.

VII. And be it enacted, That in case any of the poll books of any county, city, burgh, or town shall not have been received by the returning sheriff in time to cast up the votes on the several poll books and to declare the election within the period prescribed by this act, the said sheriff shall postpone the declaration of the election till the said several books are received.

Return may be delayed when poll books not received.

VIII. And be it enacted, that the sheriff shall, on the day after the receipt of the poll books, and before four of the clock in the afternoon, declare the result of the election, and make proclamation accordingly: Provided that if the poll books shall be received on a Saturday such declaration and proclamation shall be made before four of the clock on the Monday following.

Proclamation to be made the day after receipt of poll books.

IX. And be it enacted, that any freeholder of any county or shire in Scotland whose rights are preserved to him by the said recited act shall be entitled to make application to the sheriff of such county or shire, and upon one month's notice thereof being published on the doors of the said sheriff court, to poll at all times thereafter at the polling place for the district within which the county town is situated; and the sheriff shall delete his name from the district list, and insert it in that for the district in which the county town is situate: Provided always, that after making such appli-

Sheriff, on application of any freeholder, to remove such freeholder's name from district to county town list.

cation to the said sheriff, and publishing such notice on the doors of the said sheriff court, it shall not be lawful for the said freeholder to poll in any other district of such county or shire; and provided also, that where a fiar and life renter are registered in respect of the same freehold qualification they shall both concur in the said application.

Vote of fiar
not to be
reckoned as
well as vote
of life renter.

X. And be it enacted, that the vote of any fiar of a freehold qualification in any county or shire in Scotland whose rights are preserved to him by the said recited act shall always be taken by the sheriff on a paper apart, and shall not be reckoned by him in casting up the votes at any election where it shall appear that the life renter has voted.

Sheriff, in
cases of ne-
cessary ab-
sence, may
appoint a
special
substitute.

XI. And be it enacted, that where a sheriff is necessarily absent from any place where any duty, other than that of acting as a judge of appeal, is required of him by the said recited act or by this act, it shall be competent for him to appoint a special substitute to act for him at such place; and in the event of no such special substitution, his ordinary substitute at the place shall be entitled and is hereby required to act in his room; and if the office of sheriff shall at any time be vacant, by death or resignation, when any of the duties imposed by the said recited act or by this act (other than those imposed upon him as a judge of appeal) are required to be performed, the ordinary substitute at the head burgh of the shire appointed by the former sheriff shall be entitled and is hereby required to act until a successor to such former sheriff shall be appointed and be in a capacity to act.

Assembling
of the sheriffs
court of
appeal.

XII. And be it enacted, that the sheriffs composing the court of appeal constituted by the said recited act may assemble at the different circuit towns on such day as they shall fix between the fifteenth and twenty-fifth days of September in each year, whether the circuit courts for this and the succeeding years shall have been held prior to these dates or not; and where such court shall consist of four sheriffs, the sheriff against whose judgment any appeal shall be brought shall have no voice in the determination of any such appeal.

Recited act
repealed so
far as incon-
sistent with
this act.

XIII. And be it enacted, that in all cases in which the provisions of the said recited act shall be inconsistent with this act, and in as far as shall be necessary to give effect to the true intent and meaning of this act, but no further, the said recited act shall be and the same is to such extent hereby repealed; but the said recited act shall in all other respects remain in full force and effect, and be as good and

effectual to carry this act into execution as if the same were herein repeated and re-enacted.

XIV. And be it further enacted, that this act shall take effect from and after the passing thereof. Commence-
ment of act.

XV. And be it enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in the present session of Parliament. Act may be
amended,
&c.

An Act for rendering more easy the taking the Poll at County Elections.
[20th August, 1836.]

Whereas by an act passed in the second and third years of the reign of his present Majesty King William the Fourth, intituled "An Act to settle and determine the Divisions of Counties, and the Limits of Cities and Boroughs, in England and Wales, in so far as respects the Election of Members to serve in Parliament," it is among other things enacted, that the poll for the election of knights of the shire shall be taken at such places as in a certain schedule to the said act annexed marked (N) are mentioned: and whereas it is expedient that provision should be made for increasing the number of such polling places: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for his Majesty, by and with the advice of his privy council, from time to time hereafter, on petition from the justices of any county, riding, parts, or division in England or Wales, in quarter sessions assembled, representing that the number of polling places for such county, riding, parts, or division is insufficient and praying that the place or places mentioned in the said petition may be a polling place or polling places for the county, riding, parts or division of the county within which such place or places is or are situate, to declare that any place or places mentioned in the said petition shall be a polling place or polling places for that county, riding, parts, or division, and that the justices of the peace for such county,

2 & 3 Wm. 4,
c. 64.

Additional
polling
places may
be appointed
upon petition
from justices
in quarter
sessions as-
sembled.

riding, parts, or division in quarter sessions or some special sessions assembled, as in the said act mentioned, shall conformably to the said act divide such county, riding, parts, or division into convenient polling districts, and assign one of such districts to each polling place; and every such direction or order for creating additional polling places shall be certified under the hand of one of the clerks in ordinary of his Majesty's privy council, and when so certified shall be published in the *London Gazette*, and shall be of the same force and effect as if the same had been made by the authority of Parliament.

Notices to be given previous to any petition being made.

II. And be it further enacted, that no such petition as aforesaid shall be made by such justices so assembled unless a notice in writing shall have been delivered, one month at the least before the holding of such quarter sessions, to the clerk of the peace of the county, riding, part, or division wherein the same are held, signed by two justices of the peace for such county, riding, part, or division, and residing therein, or by ten inhabitants being registered voters for such county, riding, part, or division, which notice shall state that the court will, when such sessions are held, be moved to make such petition, nor unless the clerk of the peace shall, ten days at the least before the holding of such sessions, have caused a copy of such notice to be inserted twice at the least in two of the newspapers of such county, riding, part, or division, if two newspapers are published therein, or if not, in a newspaper published or commonly circulated therein, together with a notice of the day upon which such quarter sessions will be held: provided always, that when such motion is made any person objecting to the same shall be heard by such court against the same or any part thereof, if he thinks fit.

As to the number of polling booths to be provided.

III. Provided always, and be it enacted, that at every contested election of a knight or knights to serve in any future Parliament for any county, or for any riding, parts, or division of a county, as many polling booths shall be provided at each polling place as will allow one for every four hundred and fifty electors whose names appear upon the registry of the said county or division of a county, and who may lawfully vote at such polling place; and the high sheriff shall provide the same accordingly.

1 & 2 VICT. C. 48.

An Act to amend the Laws relating to the Qualification of Members to serve in Parliament. [27th July, 1838.]

Whereas an act was passed in the ninth year of the reign of Queen Anne, entitled "An Act for securing the Freedom of Parliament by further qualifying the Members to sit in the House of Commons:" and whereas another act was passed in the thirty-third year of the reign of King George the Second, intituled "An Act to enforce and render more effectual the Laws relating to the Qualification of Members to sit in the House of Commons:" and whereas by the act for the union of Great Britain and Ireland it is amongst other things enacted, that the qualification in respect of property of the members elected on the part of Ireland to sit in the House of Commons of the United Kingdom shall be respectively the same as were at the time of the passing of the said act provided by law in the cases of elections for counties and cities and boroughs respectively in that part of Great Britain called England, unless any other provision should thereafter be made in that respect by act of Parliament of the United Kingdom: and whereas it is expedient to repeal the said act passed in the ninth year of the reign of Queen Anne, and the said act passed in the thirty-third year of the reign of King George the Second, and the said enactment in the act for the union of Great Britain and Ireland, and to make other provisions in lieu thereof, for the better qualifying members to sit in the House of Commons by reason of the possession of property: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said act passed in the ninth year of the reign of Queen Anne, and the said act passed in the thirty-third year of the reign of King George the Second, and the said enactment in the act for the union of Great Britain and Ireland, be and the same are hereby repealed.

9 Anne, c. 5.

33 Geo. 2,
c. 20.Recited acts
repealed.

Qualification
of members.

II. And be it enacted, that from and after the passing of this act no person shall be capable of being elected a member of the House of Commons for any county, riding, part, or division of a county, within that part of Great Britain called England, the dominion of Wales, or Ireland, unless he shall be seised or entitled, for his own use and benefit, of and to an estate, legal or equitable, in lands, tenements, or hereditaments of any tenure whatever, situate, lying, or being within the United Kingdom of Great Britain and Ireland, or in the rents and profits thereof, for his own life, or for the life or lives of any other person or persons then living, or for a term of years either absolute or determinable on his own life or on the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, such estate being of the clear yearly value of not less than six hundred pounds over and above all incumbrances affecting the same; or unless he shall be possessed or entitled, for his own use and benefit, at law or in equity, for his own life or for the life or lives of any other person or persons then living, or for any term of years, either absolute or determinable on his own life or on the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, of or to personal estate or effects of any nature or kind whatsoever within the said United Kingdom of Great Britain and Ireland, or the interest, dividends, or annual proceeds of any such personal estate or effects, such personal estate or effects, interest, dividends, or annual proceeds, actually producing the clear yearly income of not less than six hundred pounds over and above all incumbrances affecting the same; or unless he shall possess more than one of the several kinds of qualification hereinbefore mentioned, the several qualifications of or to which he shall be so seised, possessed, or entitled being jointly of sufficient value to qualify a person as a member to serve in Parliament for any county according to the provisions herein contained, although each of such qualifications may, according to the same provisions, be separately insufficient for that purpose: nor shall any person be capable of being elected a member of the House of Commons for any city, borough, or cinque port within that part of Great Britain called England, the dominion of Wales, the town of Berwick-upon-Tweed, or Ireland, unless he shall be seised or entitled, for his own use and benefit, of and to an estate, legal or equitable, in lands,

tenements, or hereditaments, of any tenure whatever, situate, lying, or being within the United Kingdom of Great Britain and Ireland, or in the rents and profits thereof, for his own life or for the life or lives of any other person or persons then living, or for a term of years, either absolute or determinable on his own life or on the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, such estate being of the clear yearly value of not less than three hundred pounds over and above all incumbrances affecting the same; or unless he shall be possessed or entitled, for his own use and benefit, at law or in equity, for his own life or for the life or lives of any other person or persons then living, or for any term of years, either absolute or determinable on his own life or for the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, of or to personal estate or effects of any nature or kind whatsoever, situate within the said United Kingdom, or the interest, dividends, or annual proceeds of any such personal estate or effects, such personal estate or effects, interest, dividends, or annual proceeds, actually producing the clear yearly income of not less than three hundred pounds over and above all incumbrances affecting the same; or unless he shall possess more than one of the several kinds of qualification hereinbefore mentioned, the several qualifications of or to which he shall be so seised, possessed, or entitled being jointly of sufficient value to qualify a person as a member to serve in Parliament for any borough, according to the provisions herein contained, although each of such qualifications may, according to the same provisions, be separately insufficient for that purpose; and if any person who shall be elected or returned to serve in any Parliament for any county, riding, part, or division of a county, city, borough, or cinque port as aforesaid, shall not at the time of such election and return be qualified in manner above mentioned, such election and return shall be void.

III. And be it enacted, that every candidate at any election of a member or members to serve in Parliament for any county, riding, part, or division of a county, city, borough or cinque port as aforesaid, shall, upon a reasonable request made to him at the time of such election, or at any time before the day named in the writ of summons for the meeting of Parliament, by or on behalf of any candidate at such election, or by any two or more registered electors having a

Candidates
at elections
to make the
following
declaration,
if required.

right to vote at such election, make and subscribe a declaration to the purport or effect following, such request to be in writing, and signed by the candidate or the said two or more electors; that is to say,

Form of
declaration.

I, A. B., do solemnly and sincerely declare, that I am to the best of my knowledge and belief duly qualified to be elected as a member of the House of Commons, according to the true intent and meaning of the act passed in the second year of the reign of Queen Victoria, intituled "An Act to amend the Laws relating to the Qualification of Members to serve in Parliament," and that my qualification to be so elected doth arise out of [*here let the party state the nature of his qualification, as the case may be; if the same ariseth out of lands, tenements, or hereditaments, let him state the barony or baronies, parish or parishes, township or townships, precinct or precincts, and also the county or counties, in which such lands, tenements, or hereditaments, are situate, and also the estate in the said lands, tenements, or hereditaments, or in the rents or profits thereof, of or to which he is seised or entitled; or if the same ariseth out of personal estate or effects let him state of what nature and where situate such personal estate or effects are, and what interest he hath in such personal estate or effects, and upon what securities and in whose names the same are vested*], as hereunder set forth.

And the election and return of any person who, upon such request as aforesaid, shall wilfully refuse or neglect to make and subscribe the said declaration within twenty-four hours after such request shall have been so made, shall be void.

Before whom
declaration
to be made.

Declaration
to be certified,
under
penalty.

IV. And be it enacted, that the said declaration shall be made before the returning officer at any election, or a commissioner for that purpose lawfully appointed, or any justice of the peace within the United Kingdom of Great Britain and Ireland; and the said returning officer, commissioner, or justice of the peace before whom the said declaration shall be made is hereby required to certify the making thereof, when the same shall have been made in England or Wales, unto the High Court of Chancery, or to the Court of Queen's Bench in England, and when the same shall have been made in Ireland unto the High Court of Chancery or to the Court of Queen's Bench in Ireland, within three months after the making of the same, under the penalty of forfeiting the sum of one hundred pounds; to wit, one moiety thereof to the Queen, and the other moiety thereof to such person or persons as will sue for the same, to be recovered, with full costs of suit, by action of debt or

information, in any of her Majesty's Courts of Record at Westminster or Dublin respectively.

V. And be it enacted, that no fee or reward shall be taken for administering any such declaration, or making, receiving, or filing the certificate thereof, except one shilling for administering the declaration, and two shillings for making the certificate, and two shillings for receiving and filing the same, to be paid by the person or persons requiring such declaration to be made, under the penalty of twenty pounds, to be recovered and divided as aforesaid.

Fees for administering and filing declaration.

VI. And be it enacted, that every person who shall in future be elected and returned a member of the House of Commons for any county, riding, part, or division of a county, or for any city, borough, or cinque port within that part of Great Britain called England, the dominion of Wales, the town of Berwick-upon-Tweed, or Ireland, shall, before he shall sit or vote, after the choice of a Speaker, in the House of Commons, deliver in to the clerk of the said House, at the table of the said House, and while the House of Commons is there sitting, with their Speaker in the chair, a paper signed by such member, containing such a statement of the lands, tenements, or hereditaments, or of the personal estate or effects, whereby he maketh out his qualification, as, in pursuance of the provisions of this act, he might at the time of his election, or at such other time as is hereinbefore permitted for that purpose, at the request of any candidate at such election, or of such other parties as are hereinbefore permitted to make such request, be required to make; and shall also at the same time make and subscribe the following declaration :

Every member to deliver in at the table of the House a statement of qualification, and make the following declaration.

'I, A. B., do solemnly and sincerely declare, that I am to the best of my knowledge and belief duly qualified to be elected a member of the House of Commons according to the true intent and meaning of the act passed in the second year of the reign of Queen Victoria, intituled "An Act to amend the Laws relating to the Qualification of Members to serve in Parliament," and that my qualification to be so elected is as set forth in the paper signed by me, and now delivered to the clerk of the House of Commons.'

Form of declaration.

And the said House of Commons is hereby empowered and required to administer the said declaration and subscription, according to the direction of this act, as occasion shall be, from time to time, to every person duly demanding the same, immediately after such person shall have taken the oath of fidelity or other oath or oaths required to be taken

at the table of the said House : and the said declaration and subscription hereinbefore last directed to be made shall be entered in a parchment roll to be provided for that purpose by the clerk of the said House ; and the said paper so signed, and delivered in to the said clerk, shall be filed, and kept by him.

False declaration deemed a misdemeanor.

VII. And be it enacted, that any person who shall make and subscribe any such declaration as aforesaid, or who shall sign and deliver in any such paper as aforesaid, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

Election void if member sits or votes before he has complied with the provisions of the act.

VIII. And be it enacted, that if any person who shall in future be elected and returned a member of the House of Commons for any county, riding, part, or division of a county, or for any city, borough, or cinque port within that part of Great Britain called England, the dominion of Wales, the town of Berwick-upon-Tweed, or Ireland, shall sit or vote as a member of the House of Commons before he has delivered in such paper, and made and subscribed such declaration as aforesaid, and shall not be qualified according to the true intent and meaning of this act, his election shall be void, and a new writ shall be issued to elect another member in his room.

Not to extend to the members for the Universities ;

IX. Provided always, and be it enacted, that nothing in this act contained shall extend to either of the Universities in that part of Great Britain called England, or to the University of Trinity College, Dublin, in Ireland, or to any member or members elected and returned to serve in Parliament by any of the said Universities, but that they and each of them may elect and return members to represent them in Parliament, and that the members so elected and returned may sit and vote in the House of Commons, notwithstanding such members or any of them may not, at the time of their election and return, or afterwards, possess any such qualification as is herein required, or deliver in such paper, or make or subscribe such declaration as is herein required, anything herein contained to the contrary notwithstanding : provided also, that nothing in this act contained shall extend to make the eldest son or heir apparent of any peer or lord of Parliament, or of any person qualified by this act to serve as knight of the shire, incapable of being elected and returned, or of sitting and voting as a member of the House of Commons in any Parliament.

nor to the eldest sons of peers.

Act may be amended.

X. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

4 & 5 VICT. c. 57.

An Act for the Prevention of Bribery at Elections.

[22nd June, 1841.]

Whereas the laws in being are not sufficient to hinder corrupt and illegal practices in the election of members to serve in Parliament; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that whenever any charge of bribery shall be brought before any select committee of the House of Commons appointed to try and determine the merits of any return or election of a member or members to serve in Parliament, the committee shall receive evidence upon the whole matter whereon it is alleged that bribery has been committed; neither shall it be necessary to prove agency, in the first instance, before giving evidence of those facts whereby the charge of bribery is to be sustained; and the committee in their report to the House of Commons shall separately and distinctly report upon the fact or facts of bribery which shall have been proved before them, and also whether or not it shall have been proved that such bribery was committed with the knowledge and consent of any sitting member or candidate at the election.

Evidence of
bribery to be
given on the
whole matter
without first
proving
agency

5 & 6 VICT. c. 102.

An Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament.

[10th August, 1842.]

Whereas it has become notorious that extensive bribery prevails in many places in the election of members to serve in Parliament, and that the laws now in force are insufficient for the discovery thereof; and it is expedient that further

Election
committees
authorized
to ascertain
the cause of
the alleged
violation of
the laws
of bribery, and
to report.

powers be given for that purpose, and for collecting evidence on which to found further proceedings in regard to places in which bribery shall be found to have been generally or extensively practised: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that if after a committee shall have been nominated for the trial of an election petition, in which bribery shall be charged to have been committed, the petition shall be withdrawn, or the charges of bribery therein contained, or any other charge of bribery which shall have been made or stated before such committee, whether in support of any petition complaining of the return, or by way of recrimination, or in answer to any petition, shall be withdrawn, abandoned, or not *bona fide* prosecuted before the said committee, it shall and may be lawful for such committee in its discretion to examine into and ascertain the circumstances under which such withdrawal, abandonment, or forbearance to prosecute such charges as aforesaid shall have taken place, and whether the same has been the matter of compromise, arrangement, or understanding, covert or otherwise, in order to avoid the discovery of bribery at the said election; and the said committee shall be authorized, if it shall think fit, to state in their report upon the election petition any special matter relating to the cause and reason of the abandonment or forbearance to prosecute the said charges; and for more effectual discovery of the truth of the matters so to be inquired into full power and authority is hereby given to such committee to examine (as witnesses subject to the ordinary rules of evidence) the sitting member or members, or candidate or candidates at the said election, and their several and respective agents, and all other persons whomsoever, touching and concerning such withdrawal, abandonment, or forbearance to prosecute such charges.

If a committee recommend further inquiry, the Speaker to nominate a prosecutor, and committee to re-assemble.

II. And be it enacted, that if any committee nominated to try an election petition shall recommend that further inquiry and investigation should be made regarding bribery at such election, in that case the speaker shall nominate an agent to prosecute the investigation into the matter of the said bribery; and the said committee shall, within fourteen days from the time of their having made their report on the election petition, reassemble, and shall inquire and ascertain whether bribery was or was not practised at the said election, and to what extent, and shall specially report to the

House all such matters relating to the said bribery, and the parties implicated or concerned therein, as to the said committee shall seem expedient.

III. And be it enacted, that the said committee, when so reassembled, shall possess, and are hereby authorized to exercise, according to their discretion, all and every the powers and authorities relating to the examination of members of Parliament, candidates, agents, and all other persons whomsoever, and to the production of papers and writings relating to the matter under inquiry, as were possessed or might have been exercised by the said committee upon the trial of the said election petition.

IV. And be it enacted, that every petition to the House of Commons, complaining that general or extensive bribery has prevailed at the then last or any previous election of a member or members to serve in Parliament for any county, borough, or place, which shall be subscribed by some person claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned or elected thereat, or alleging himself to have been a candidate at the election, and which shall be presented after the time limited by the House for presenting election petitions, and within three calendar months next after some one or more of the acts of bribery charged therein shall have been committed, if the House be then sitting, or if such period shall expire during an adjournment of the House for the Easter or Christmas holidays, or during a prorogation of Parliament, then within two days after the end of such adjournment, or within thirty days after the beginning of the next session, shall be inquired into by a committee to be appointed in all respects as a committee for trying an election petition; and for this purpose such petition shall be referred to the general committee of elections, who, in case the examiner of recognizances shall report that the recognizances in respect of such petition are sufficient, pursuant to the provisions hereinafter contained, shall give the same notices and proceed in the same manner in appointing such committee as in appointing an election committee under an act passed in the fifth year of the reign of her present Majesty, intituled "An Act to amend the law for the trial of Controverted Elections;" and all the powers, clauses, and provisions in that or any other act for the time being in force for regulating the trial of controverted elections shall be taken to apply to the said committee and its proceedings, and to all petitioners, parties, witnesses,

A committee so reassembled to possess all the powers of election committees.

A petition alleging general bribery, if presented within the times herein mentioned shall be referred to the general committee, and proceeded with as other petitions.

Costs.

Committee to proceed only as to bribery committed within three months before presenting petition.

Proceedings in case an election petition is withdrawn before a committee is appointed for trying the same.

Petitioners to enter into recognizance.

and others respectively; and the said committee shall inquire and ascertain whether bribery was or was not practised at the said election, and shall specially report to the House all such matters relating to the said bribery, and the parties implicated or concerned therein, as to the said committee shall seem expedient: provided always, that if the committee shall report that there was reasonable and probable ground for the allegations of the petition, the said committee shall have power to order that the costs of the petitioners shall be borne as in the case of a committee on any public matter ordered by the House of Commons.

V. Provided always, and be it enacted, that the said committee shall (before any other matter of the said petition) inquire whether any of the said acts of bribery charged therein had been committed within three months next before the time of presenting the said petition, and unless it shall be proved to the satisfaction of the said committee that one or more of the acts of bribery charged in the said petition had been committed within the said period of three months, the said committee shall not further proceed with the matter of the said petition.

VI. Provided always, and be it enacted, that if any election petition containing a charge of bribery shall be withdrawn before a committee shall be appointed for the purpose of trying such petition, any petition complaining that general or extensive bribery has prevailed at such election, and which shall be subscribed as above provided, which shall be presented to the House at any time within twenty-one days of the withdrawal of such election petition being notified to the House, or if such period shall expire during an adjournment of the House for the Easter or Christmas holidays, or during a prorogation of Parliament, then within two days after the end of such adjournment, or within fourteen days after the beginning of the next session, such petition shall, notwithstanding that three calendar months may have elapsed since any of the acts of bribery charged therein shall have been committed, be dealt with in like manner in all respects as above provided in the case of a petition presented within three calendar months next after some one or more of the acts of bribery charged therein shall have been committed.

VII. Provided always, and be it enacted, that no such petition as aforesaid shall be referred as hereinbefore provided, unless some time before three of the clock in the afternoon of the seventh day after the day on which such

petition shall have been presented, a recognizance or recognizances shall be entered into by two persons, each in the sum of two hundred and fifty pounds, or by one person in the sum of five hundred pounds, conditioned to be forfeited unless such persons shall establish and prove to the satisfaction of the committee to which the petition shall be referred that there was reasonable and probable ground for the allegations contained in such petition.

VIII. And be it enacted, that the chairman of any such committee, with the authority and sanction of such committee, shall certify under his hand whether such recognizance has been forfeited; and in case the said chairman shall certify that such recognizance has been forfeited, the sum or sums mentioned in such recognizance shall be absolutely forfeited, and shall be recoverable from the party or parties who shall have entered into such recognizance by information by the attorney general; and upon such information being filed, and upon production of the said recognizance and certificate, with an affidavit of the signature thereto, final judgment may be signed upon such information, and execution may be forthwith issued to levy the same: provided always, that if the handwriting of the chairman of the committee, by whom the certificate shall have been signed, be duly verified, the validity of such certificate shall not be called in question in any court upon the allegation of any matter previous to the date thereof.

Recognizances for
felony, how
recoverable.

IX. And be it enacted, that the said recognizances shall be entered into in the same manner, and before the same parties, and with the like affidavit of sufficiency, as the recognizances of sureties in the case of election petitions.

Recognizances how
to be entered
into.

X. And be it enacted, that upon any such recognizances being entered into before the examiner of recognizances, or received by him, with the affidavit thereunto annexed, he shall forthwith report the same to the Speaker; and upon receipt of any such report the Speaker shall communicate the same to the House, and shall also cause notice thereof to be immediately sent by the post to the returning officer for the place for which the election to which such petition shall relate was held; and such returning officer shall cause a true copy of such notice to be affixed on or near the door of the town hall or of the parish church of or nearest to the place for which such election was held: and such notice shall also be inserted, by order of the Speaker, in one of the next two *London Gazettes*.

Recognizances, when
entered into,
to be reported
to the
Speaker, and
public notice
thereof to
be given.

XI. And be it enacted, that it shall be lawful for any

Objections to recognizances, by whom and within what time to be taken.

person who shall have been a candidate at the election to which such petition shall relate, and for any person complained of in such petition, and for any person having for the time being a right to vote for a member to serve in Parliament for the place to which such petition shall relate, or having in fact voted at the election to which such petition shall relate, to object to the parties or either of them who shall have entered into any such recognizance, on the same grounds as those on which sureties entering into recognizances in the case of election petitions may be objected to: provided, that the ground of objection shall be stated in writing under the hand of the objecting party, or his or their agent, and shall be delivered to the examiner of recognizances within ten days after the day of the date of the *Gazette* in which such notice as aforesaid shall be inserted, if the party objected to reside in England, or within fourteen days after such date if the party objected to reside in Scotland or Ireland.

Proceedings for determining objections to recognizances.

XII. And be it enacted, that for the purpose of ascertaining and reporting upon the sufficiency of the parties who shall have entered into any such recognizance, such recognizance shall be dealt with in all respects as recognizances entered into by sureties in the case of election petitions; and all the provisions of the said act of the fifth year of her present Majesty, or of any other act for the time being in force for regulating the trial of controverted elections, which relate to the mode of taking objections to sureties and to the proceedings consequential thereon, shall be applicable and in force with regard to the recognizances required to be entered into under the provisions of this act.

Committees under this act not to have power to affect the seat in Parliament.

XIII. Provided always, and it is hereby enacted and declared, that no committee who shall reassemble under the provisions hereinbefore contained, nor any committee appointed to investigate the matter of any petition which may be presented after the time limited for presenting election petitions, as herein also provided, shall possess any power or authority to determine or in any way affect the seat or return of any member or members of the House of Commons, or the issuing or restraining the issue of any writ for the election of a member or members of Parliament.

For defraying the expenses of prosecution.

XIV. And be it enacted, that upon the prosecution of any inquiry under the authority of this act by an agent appointed by the Speaker as herein is provided, every such agent is hereby authorized from time to time to certify under his hand to the commissioners of her Majesty's

Treasury what sum and sums of money is or are required to meet the necessary expences for effectually prosecuting any such inquiry, including the sums proper and necessary to be paid to and for the witnesses who may be required to attend the inquiry to which such certificate may relate; and the said commissioners of her Majesty's Treasury shall be authorized to advance to the said agent from time to time such sums as shall be needed for the purposes aforesaid, which sums, or so much thereof as shall be levied under any order for the payment of costs as hereinafter provided, shall be reimbursed to the said commissioners of her Majesty's Treasury.

XV. And be it enacted, that it shall and may be lawful for any committee reassembled as aforesaid and for every committee appointed under the authority of this act, in their discretion, to report, order, and direct that the costs, charges, and expences incurred and occasioned in and about the inquiries respectively prosecuted before any such committee, or any part or proportion thereof, shall be paid by any party, person or persons, who may have been proved before the said committee, being first duly heard, to have been guilty of bribery, or of having received bribes, or to have occasioned costs, charges, and expences to have been incurred by having brought forward frivolous and vexatious charges of bribery against any other person or persons; and the Speaker shall deliver to the agent of the House of Commons, or of the party or parties, a certificate, signed by himself, expressing the amount of the costs and expences to be paid by each of the said parties, with the name or description of the party liable to pay the same; and such certificate shall be conclusive evidence of the amount of and all other matters to establish the demand, and the liability of the several parties to pay the same.

Committee
to order by
whom costs
are to be
paid.

XVI. And be it enacted, that all costs, charges, and expences mentioned or referred to in the report of any committee made under the authority of this act shall be ascertained and allowed by the same person, and in the same manner, as the costs, charges, and expences of petitions reported to be frivolous and vexatious are now by law required to be ascertained and allowed; and all the several provisions relating to costs upon frivolous and vexatious petitions, and to the Speaker's certificate of the amount, and to the recovery thereof, shall extend to and apply, so far as may be, to costs, charges, and expences payable under the authority of this act, as fully and effectually as if the same

Costs how
to be ascer-
tained.

Objections to recognizances, by whom and within what time to be taken.

person who shall have been a candidate at the election to which such petition shall relate, and for any person complained of in such petition, and for any person having for the time being a right to vote for a member to serve in Parliament for the place to which such petition shall relate, or having in fact voted at the election to which such petition shall relate, to object to the parties or either of them who shall have entered into any such recognizance, on the same grounds as those on which sureties entering into recognizances in the case of election petitions may be objected to: provided, that the ground of objection shall be stated in writing under the hand of the objecting party, or his or their agent, and shall be delivered to the examiner of recognizances within ten days after the day of the date of the *Gazette* in which such notice as aforesaid shall be inserted, if the party objected to reside in England, or within fourteen days after such date if the party objected to reside in Scotland or Ireland.

Proceedings for determining objections to recognizances.

XII. And be it enacted, that for the purpose of ascertaining and reporting upon the sufficiency of the parties who shall have entered into any such recognizance, such recognizance shall be dealt with in all respects as recognizances entered into by sureties in the case of election petitions; and all the provisions of the said act of the fifth year of her present Majesty, or of any other act for the time being in force for regulating the trial of controverted elections, which relate to the mode of taking objections to sureties and to the proceedings consequential thereon, shall be applicable and in force with regard to the recognizances required to be entered into under the provisions of this act.

Committees under this act not to have power to affect the seat in Parliament.

XIII. Provided always, and it is hereby enacted and declared, that no committee who shall reassemble under the provisions hereinbefore contained, nor any committee appointed to investigate the matter of any petition which may be presented after the time limited for presenting election petitions, as herein also provided, shall possess any power or authority to determine or in any way affect the seat or return of any member or members of the House of Commons, or the issuing or restraining the issue of any writ for the election of a member or members of Parliament.

For defraying the expenses of prosecution.

XIV. And be it enacted, that upon the prosecution of any inquiry under the authority of this act by an agent appointed by the Speaker as herein is provided, every such agent is hereby authorized from time to time to certify under his hand to the commissioners of her Majesty

Treasury what sum and sums of money is or are required to meet the necessary expences for effectually prosecuting any such inquiry, including the sums proper and necessary to be paid to and for the witnesses who may be required to attend the inquiry to which such certificate may relate; and the said commissioners of her Majesty's Treasury shall be authorized to advance to the said agent from time to time such sums as shall be needed for the purposes aforesaid, which sums, or so much thereof as shall be levied under any order for the payment of costs as hereinafter provided, shall be reimbursed to the said commissioners of her Majesty's Treasury.

XV. And be it enacted, that it shall and may be lawful for any committee reassembled as aforesaid and for every committee appointed under the authority of this act, in their discretion, to report, order, and direct that the costs, charges, and expences incurred and occasioned in and about the inquiries respectively prosecuted before any such committee, or any part or proportion thereof, shall be paid by any party, person or persons, who may have been proved before the said committee, being first duly heard, to have been guilty of bribery, or of having received bribes, or to have occasioned costs, charges, and expences to have been incurred by having brought forward frivolous and vexatious charges of bribery against any other person or persons; and the Speaker shall deliver to the agent of the House of Commons, or of the party or parties, a certificate, signed by himself, expressing the amount of the costs and expences to be paid by each of the said parties, with the name or description of the party liable to pay the same; and such certificate shall be conclusive evidence of the amount of and all other matters to establish the demand, and the liability of the several parties to pay the same.

Committee
to order by
whom costs
are to be
paid.

XVI. And be it enacted, that all costs, charges, and expences mentioned or referred to in the report of any committee made under the authority of this act shall be ascertained and allowed by the same person, and in the same manner, as the costs, charges, and expences of petitions reported to be frivolous and vexatious are now by law required to be ascertained and allowed; and all the several provisions relating to costs upon frivolous and vexatious petitions, and to the Speaker's certificate of the amount, and to the recovery thereof, shall extend to and apply, so far as may be, to costs, charges, and expences payable under the authority of this act, as fully and effectually as if the same

Costs how
to be ascer-
tained.

Objections to recognizances, by whom and within what time to be taken.

person who shall have been a candidate at the election to which such petition shall relate, and for any person complained of in such petition, and for any person having for the time being a right to vote for a member to serve in Parliament for the place to which such petition shall relate, or having in fact voted at the election to which such petition shall relate, to object to the parties or either of them who shall have entered into any such recognizance, on the same grounds as those on which sureties entering into recognizances in the case of election petitions may be objected to: provided, that the ground of objection shall be stated in writing under the hand of the objecting party, or his or their agent, and shall be delivered to the examiner of recognizances within ten days after the day of the date of the *Gazette* in which such notice as aforesaid shall be inserted, if the party objected to reside in England, or within fourteen days after such date if the party objected to reside in Scotland or Ireland.

Proceedings for determining objections to recognizances.

XII. And be it enacted, that for the purpose of ascertaining and reporting upon the sufficiency of the parties who shall have entered into any such recognizance, such recognizance shall be dealt with in all respects as recognizances entered into by sureties in the case of election petitions; and all the provisions of the said act of the fifth year of her present Majesty, or of any other act for the time being in force for regulating the trial of controverted elections, which relate to the mode of taking objections to sureties and to the proceedings consequential thereon, shall be applicable and in force with regard to the recognizances required to be entered into under the provisions of this act.

Committees under this act not to have power to affect the seat in Parliament.

XIII. Provided always, and it is hereby enacted and declared, that no committee who shall reassemble under the provisions hereinbefore contained, nor any committee appointed to investigate the matter of any petition which may be presented after the time limited for presenting election petitions, as herein also provided, shall possess any power or authority to determine or in any way affect the seat or return of any member or members of the House of Commons, or the issuing or restraining the issue of any writ for the election of a member or members of Parliament.

For defraying the expenses of prosecution.

XIV. And be it enacted, that upon the prosecution of any inquiry under the authority of this act by an agent appointed by the Speaker as herein is provided, every such agent is hereby authorized from time to time to certify under his hand to the commissioners of her Majesty's

Treasury what sum and sums of money is or are required to meet the necessary expences for effectually prosecuting any such inquiry, including the sums proper and necessary to be paid to and for the witnesses who may be required to attend the inquiry to which such certificate may relate; and the said commissioners of her Majesty's Treasury shall be authorized to advance to the said agent from time to time such sums as shall be needed for the purposes aforesaid, which sums, or so much thereof as shall be levied under any order for the payment of costs as hereinafter provided, shall be reimbursed to the said commissioners of her Majesty's Treasury.

XV. And be it enacted, that it shall and may be lawful for any committee reassembled as aforesaid and for every committee appointed under the authority of this act, in their discretion, to report, order, and direct that the costs, charges, and expences incurred and occasioned in and about the inquiries respectively prosecuted before any such committee, or any part or proportion thereof, shall be paid by any party, person or persons, who may have been proved before the said committee, being first duly heard, to have been guilty of bribery, or of having received bribes, or to have occasioned costs, charges, and expences to have been incurred by having brought forward frivolous and vexatious charges of bribery against any other person or persons; and the Speaker shall deliver to the agent of the House of Commons, or of the party or parties, a certificate, signed by himself, expressing the amount of the costs and expences to be paid by each of the said parties, with the name or description of the party liable to pay the same; and such certificate shall be conclusive evidence of the amount of and all other matters to establish the demand, and the liability of the several parties to pay the same.

Committee
to order by
whom costs
are to be
paid.

XVI. And be it enacted, that all costs, charges, and expences mentioned or referred to in the report of any committee made under the authority of this act shall be ascertained and allowed by the same person, and in the same manner, as the costs, charges, and expences of petitions reported to be frivolous and vexatious are now by law required to be ascertained and allowed; and all the several provisions relating to costs upon frivolous and vexatious petitions, and to the Speaker's certificate of the amount, and to the recovery thereof, shall extend to and apply, so far as may be, to costs, charges, and expences payable under the authority of this act, as fully and effectually as if the same

Costs how
to be ascer-
tained.

Appendix.

were re-enacted by this act, the Speaker's said certificate being hereby declared to be conclusive evidence of all and every the matters necessary to the establishment of the demand and of the liability of all parties and persons mentioned therein as liable thereto.

Section
1885

XVII. And be it enacted, that it shall be lawful for the agent appointed by the Speaker as aforesaid, or the party or parties named in the certificate, to demand the payment of the whole amount of such taxed costs and expences, so certified as above, from any one or more of the persons herein made liable to the payment thereof, and, in case of non-payment thereof, in his or her name to recover the same by action of debt in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, in which action it shall be sufficient for the plaintiff to declare that the defendant or defendants is or are indebted to him in the sum mentioned in the said certificate; and the said plaintiff shall, upon filing the said declaration, together with the said certificate, and affidavit of the handwriting of the Speaker thereto, be at liberty to sign judgment as for want of plea by nil dicit, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to due course of law; and no writ of error shall be allowed, and the validity of such certificate shall not be questioned, in any court, upon the allegation of any matter or thing anterior to the date thereof; and the said agent or party or parties named in the certificate shall pay over to the commissioners of her Majesty's Treasury the amount of the several sums which he or they shall recover or receive in respect of such costs in and by such action or otherwise.

Costs to be
a debt to her
Majesty.

XVIII. And be it enacted, that the amount of any costs payable to the person appointed by the attorney general as aforesaid shall, upon the issuing of the Speaker's certificate, be held and deemed a debt upon record due to her Majesty.

Persons pay-
ing costs
may recover
part from
other persons
liable there-
to.

XIX. And be it enacted, that in every case it shall be lawful for any person or persons, from whom the amount of such costs and expences shall have been so recovered, to recover in like manner from the other persons, or any of them (if such there shall be), who are jointly liable to the payment of the said costs, expences, and fees, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

XX. And whereas a practice has prevailed in certain boroughs and places of making payments by or on behalf of

candidates to the voters in such manner that doubts have been entertained whether such payments are to be deemed bribery; be it declared and enacted, that the payment or gift of any sum of money, or other valuable consideration whatsoever, to any voter, before, during, or after any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which shall be so paid or given on account of such voter having voted or having refrained from voting, or being about to vote or refrain from voting, at the said election, whether the same shall have been paid or given under the name of head money, or any other name whatsoever, and whether such payment shall have been in compliance with any usage or practice, or not, shall be deemed bribery (a).

Payment of
head money,
&c. declared
bribery.

XXI. And be it enacted, that all the foregoing provisions of this act, so far as the same are applicable thereto, shall apply to any election which may have taken place, or which may take place, after the first day of June, one thousand eight hundred and forty-two.

Act to apply
to elections
after 1st June
1842.

XXII. And whereas the provisions of an act passed in the seventh year of the reign of King William the Third, intituled "An Act for preventing Charges and Expenses in Elections of Members to serve in Parliament," have been found insufficient to prevent corrupt treating at elections, and it is expedient to extend such provisions; be it enacted, that every candidate or person elected to serve in Parliament for any county, riding or division of a county, or for any city, borough, or district of boroughs, who shall, from and after the passing of this act, by himself, or by or with any person, or in any manner, directly or indirectly, give or provide, or cause or knowingly allow to be given or provided, wholly or partly at his expense, or pay wholly or in part any expenses incurred for any meat, drink, entertainment, or provision to or for any person, at any time, either before, during, or after any such election, for the purpose of corruptly influencing such person, or any other person, to give or to refrain from giving his vote in any such election, or for the purpose of corruptly rewarding such person, or any other person, for having given or refrained from giving his vote at any such election, shall be incapable of being elected or sitting in Parliament for that county, riding or division of a county, or for that city, borough, or district of boroughs, during the Parliament for which such election shall be holden (a).

For prevent-
ing treating.
7 & 8 Wm. 3.
c. 25.

(a) These sections are repealed by the "Corrupt Practices Prevention Act, 1854."

XXIII. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

6 VICT. c. 18.

An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of voting, and to regulate certain Proceedings in the Election of Members to serve in Parliament for England and Wales.

[31st May, 1843.]

LXXIX. And be it enacted, that at every future election for a member or members to serve in Parliament for any county, city, or borough, the register of voters so made as aforesaid shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election: provided always, that it shall not be lawful for any person to vote at any election for a member or members for any county where the qualification annexed to the name of such person shall have appeared annexed to his name in the preceding register, and such person, on the last day of July in the year in which such register so in force was formed, shall have ceased to have such qualification, or shall not have retained so much thereof as would have entitled him to have had his name inserted in such register: provided also, that no person shall be entitled to vote at any future election for a member or members to serve in Parliament for any city or borough, unless he shall, ever since the twenty-first day of July in the year in which his name was inserted in the register of voters then in force, have resided and at the time of voting shall continue to reside within the city or borough, or place sharing in the election for the city or borough, in the election for which he shall claim to be entitled to vote, or within the distance thereof required by the said recited act to entitle such person to be registered in any year.

LXXX. " And whereas by the said first-recited act it is enacted, that certain questions might be put to every voter at the time of his tendering his vote in any election: and whereas it is expedient that all the provisions contained in

the said recited act touching and concerning the said questions, and administering and taking of any oath at the time of polling, should be repealed, and other provisions be enacted in lieu thereof;" be it therefore enacted, that the said provisions shall be and the same are hereby repealed.

LXXXI. And be it enacted, that in all elections whatever of a member or members to serve in Parliament for any county, riding, parts, or division of a county, or for any city or borough in England or Wales, or the town of Berwick-upon-Tweed, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; (that is to say), that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions or either of them:

No inquiry at time of election except as to identity of the voter, and whether he has already voted.

1. Are you the same person whose name appears as *A. B.* on the register of voters now in force for the county of *[or for the riding, parts, or division of the county of]*, *or for the city [or borough] of [as the case may be]?*
2. Have you already voted, either here or elsewhere, at this election for the county of *[or for the riding, parts, or division of the county of]*, *or for the city [or borough] of [as the case may be]?*

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanor, and shall and may be indicted and punished accordingly; and the returning officer or his deputy, or a commissioner or commissioners to be for that purpose by law appointed, shall, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form:

"You do swear *[or affirm, as the case may be]*, That you are the same person whose name appears as *A. B.* on the register of voters now in force for the county of *[or for the riding, parts, or division of the county of]* *or for the city or borough of [as the case may be]*, and that you have not before voted, either here or elsewhere, at the present election for the county of *[or for the riding, parts, or division of the county of]* *or for the city or borough of [as the case may be]*.

Oath to be taken, if required.

So help you God."

at the table of the said House : and the said declaration and subscription hereinbefore last directed to be made shall be entered in a parchment roll to be provided for that purpose by the clerk of the said House ; and the said paper so signed, and delivered in to the said clerk, shall be filed, and kept by him.

False declaration deemed a misdemeanor.

VII. And be it enacted, that any person who shall make and subscribe any such declaration as aforesaid, or who shall sign and deliver in any such paper as aforesaid, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

Election void if member sits or votes before he has complied with the provisions of the act.

VIII. And be it enacted, that if any person who shall in future be elected and returned a member of the House of Commons for any county, riding, part, or division of a county, or for any city, borough, or cinque port within that part of Great Britain called England, the dominion of Wales, the town of Berwick-upon-Tweed, or Ireland, shall sit or vote as a member of the House of Commons before he has delivered in such paper, and made and subscribed such declaration as aforesaid, and shall not be qualified according to the true intent and meaning of this act, his election shall be void, and a new writ shall be issued to elect another member in his room.

Not to extend to the members for the Universities ;

IX. Provided always, and be it enacted, that nothing in this act contained shall extend to either of the Universities in that part of Great Britain called England, or to the University of Trinity College, Dublin, in Ireland, or to any member or members elected and returned to serve in Parliament by any of the said Universities, but that they and each of them may elect and return members to represent them in Parliament, and that the members so elected and returned may sit and vote in the House of Commons, notwithstanding such members or any of them may not, at the time of their election and return, or afterwards, possess any such qualification as is herein required, or deliver in such paper, or make or subscribe such declaration as is herein required, anything herein contained to the contrary notwithstanding : provided also, that nothing in this act contained shall extend to make the eldest son or heir apparent of any peer or lord of Parliament, or of any person qualified by this act to serve as knight of the shire, incapable of being elected and returned, or of sitting and voting as a member of the House of Commons in any Parliament.

nor to the eldest sons of peers.

Act may be amended.

X. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

4 & 5 Vict. c. 57.

An Act for the Prevention of Bribery at Elections.

[22nd June, 1841.]

Whereas the laws in being are not sufficient to hinder corrupt and illegal practices in the election of members to serve in Parliament; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that whenever any charge of bribery shall be brought before any select committee of the House of Commons appointed to try and determine the merits of any return or election of a member or members to serve in Parliament, the committee shall receive evidence upon the whole matter whereon it is alleged that bribery has been committed; neither shall it be necessary to prove agency, in the first instance, before giving evidence of those facts whereby the charge of bribery is to be sustained; and the committee in their report to the House of Commons shall separately and distinctly report upon the fact or facts of bribery which shall have been proved before them, and also whether or not it shall have been proved that such bribery was committed with the knowledge and consent of any sitting member or candidate at the election.

Evidence of
bribery to be
given on the
whole matter
without first
proving
agency

5 & 6 Vict. c. 102.

An Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament.

[10th August, 1842.]

Whereas it has become notorious that extensive bribery prevails in many places in the election of members to serve in Parliament, and that the laws now in force are insufficient for the discovery thereof; and it is expedient that further

Election committees authorized to ascertain the cause of the abandonment of charges of bribery, and to report.

powers be given for that purpose, and for collecting evidence on which to found further proceedings in regard to places in which bribery shall be found to have been generally or extensively practised; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that if after a committee shall have been nominated for the trial of an election petition, in which bribery shall be charged to have been committed, the petition shall be withdrawn, or the charges of bribery therein contained, or any other charge of bribery which shall have been made or stated before such committee, whether in support of any petition complaining of the return, or by way of recrimination, or in answer to any petition, shall be withdrawn, abandoned, or not *bona fide* prosecuted before the said committee, it shall and may be lawful for such committee in its discretion to examine into and ascertain the circumstances under which such withdrawal, abandonment, or forbearance to prosecute such charges as aforesaid shall have taken place, and whether the same has been the matter of compromise, arrangement, or understanding, covert or otherwise, in order to avoid the discovery of bribery at the said election; and the said committee shall be authorized, if it shall think fit, to state in their report upon the election petition any special matter relating to the cause and reason of the abandonment or forbearance to prosecute the said charges; and for more effectual discovery of the truth of the matters so to be inquired into full power and authority is hereby given to such committee to examine (as witnesses subject to the ordinary rules of evidence) the sitting member or members, or candidate or candidates at the said election, and their several and respective agents, and all other persons whomsoever, touching and concerning such withdrawal, abandonment, or forbearance to prosecute such charges.

If a committee recommend further inquiry, the Speaker to nominate a prosecutor, and committee to re-assemble.

II. And be it enacted, that if any committee nominated to try an election petition shall recommend that further inquiry and investigation should be made regarding bribery at such election, in that case the speaker shall nominate an agent to prosecute the investigation into the matter of the said bribery; and the said committee shall, within fourteen days from the time of their having made their report on the election petition, reassemble, and shall inquire and ascertain whether bribery was or was not practised at the said election, and to what extent, and shall specially report to the

House all such matters relating to the said bribery, and the parties implicated or concerned therein, as to the said committee shall seem expedient.

III. And be it enacted, that the said committee, when so reassembled, shall possess, and are hereby authorized to exercise, according to their discretion, all and every the powers and authorities relating to the examination of members of Parliament, candidates, agents, and all other persons whomsoever, and to the production of papers and writings relating to the matter under inquiry, as were possessed or might have been exercised by the said committee upon the trial of the said election petition.

A committee so reassembled to possess all the powers of election committees.

IV. And be it enacted, that every petition to the House of Commons, complaining that general or extensive bribery has prevailed at the then last or any previous election of a member or members to serve in Parliament for any county, borough, or place, which shall be subscribed by some person claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned or elected thereat, or alleging himself to have been a candidate at the election, and which shall be presented after the time limited by the House for presenting election petitions, and within three calendar months next after some one or more of the acts of bribery charged therein shall have been committed, if the House be then sitting, or if such period shall expire during an adjournment of the House for the Easter or Christmas holidays, or during a prorogation of Parliament, then within two days after the end of such adjournment, or within thirty days after the beginning of the next session, shall be inquired into by a committee to be appointed in all respects as a committee for trying an election petition; and for this purpose such petition shall be referred to the general committee of elections, who, in case the examiner of recognizances shall report that the recognizances in respect of such petition are sufficient, pursuant to the provisions hereinafter contained, shall give the same notices and proceed in the same manner in appointing such committee as in appointing an election committee under an act passed in the fifth year of the reign of her present Majesty, intituled "An Act to amend the law for the trial of Controverted Elections;" and all the powers, clauses, and provisions in that or any other act for the time being in force for regulating the trial of controverted elections shall be taken to apply to the said committee and its proceedings, and to all petitioners, parties, witnesses,

A petition alleging general bribery, if presented within the times herein mentioned shall be referred to the general committee, and proceeded with as other petitions.

4 & 5 Vict. c. 53.

Costs. and others respectively; and the said committee shall inquire and ascertain whether bribery was or was not practised at the said election, and shall specially report to the House all such matters relating to the said bribery, and the parties implicated or concerned therein, as to the said committee shall seem expedient: provided always, that if the committee shall report that there was reasonable and probable ground for the allegations of the petition, the said committee shall have power to order that the costs of the petitioners shall be borne as in the case of a committee on any public matter ordered by the House of Commons.

Committee to proceed only as to bribery committed within three months before presenting petition.

V. Provided always, and be it enacted, that the said committee shall (before any other matter of the said petition) inquire whether any of the said acts of bribery charged therein had been committed within three months next before the time of presenting the said petition, and unless it shall be proved to the satisfaction of the said committee that one or more of the acts of bribery charged in the said petition had been committed within the said period of three months, the said committee shall not further proceed with the matter of the said petition.

Proceedings in case an election petition is withdrawn before a committee is appointed for trying the same.

VI. Provided always, and be it enacted, that if any election petition containing a charge of bribery shall be withdrawn before a committee shall be appointed for the purpose of trying such petition, any petition complaining that general or extensive bribery has prevailed at such election, and which shall be subscribed as above provided, which shall be presented to the House at any time within twenty-one days of the withdrawal of such election petition being notified to the House, or if such period shall expire during an adjournment of the House for the Easter or Christmas holidays, or during a prorogation of Parliament, then within two days after the end of such adjournment, or within fourteen days after the beginning of the next session, such petition shall, notwithstanding that three calendar months may have elapsed since any of the acts of bribery charged therein shall have been committed, be dealt with in like manner in all respects as above provided in the case of a petition presented within three calendar months next after some one or more of the acts of bribery charged therein shall have been committed.

Petitioners to enter into recognizance.

VII. Provided always, and be it enacted, that no such petition as aforesaid shall be referred as hereinbefore provided, unless some time before three of the clock in the afternoon of the seventh day after the day on which such

the general post office in London; and the postmaster or postmasters general are hereby directed, immediately on receipt of such poll books to convey the same to the crown office, and to deliver the same there, so sealed as aforesaid, to the said clerk of the crown or his deputy; and the said clerk of the crown or his deputy is hereby required to give to such postmaster or postmasters general, sheriff, under sheriff, returning officer, or agent delivering the same, a memorandum in writing, acknowledging the receipt of such poll books, and setting forth the day and hour when the same were delivered at the crown office; and the said clerk of the crown or his deputy is hereby required, immediately on receipt of such poll books, to register the same in the books of the said crown office, and to indorse thereon the day and hour upon which he received the same; and every such sheriff, under sheriff, or returning officer is hereby required, at the time of transmitting such poll books as aforesaid through the post office, to address and forward a letter by the same post or mail to the said clerk of the crown, informing him of such transmission, and giving the number and description of such poll books so transmitted.

XCIV. And be it enacted, that office copies issued by the said clerk of the crown or his deputy, of such poll books, shall be taken in evidence in all courts of law, in actions for bribery or personation, or for any other purpose whatsoever.

Office copies of poll books to be received in evidence in courts.

XCV. And be it enacted, that the said clerk of the crown shall keep and preserve the said several poll books, and shall deliver to any party applying for the same, an office copy of all or any part of such poll books on payment of a reasonable charge for writing the same, and shall also permit any party to inspect such poll books.

Clerk of the Crown to preserve poll books, and deliver office copies, if required;

XCVI. And be it enacted, that the said clerk of the crown shall, upon receiving a warrant, signed by the chairman of any committee of the House of Commons appointed for the trial of controverted elections, produce, by himself or his agent, before such committee, the said several books so deposited with him as aforesaid, and such production shall be sufficient *prima facie* proof of the authenticity of the said poll books.

and to produce them before election committee, if required.

XCVII. And be it enacted, that every sheriff, under sheriff, clerk of the peace, town clerk, secondary, returning officer, clerk of the crown, postmaster, overseer, or other person, or public officer, required by this act to do any matter or thing, shall for every wilful misfeasance, or wilful act

Parties wilfully contravening the act liable to an action for debt.

Objections to recognizances, by whom and within what time to be taken.

person who shall have been a candidate at the election to which such petition shall relate, and for any person complained of in such petition, and for any person having for the time being a right to vote for a member to serve in Parliament for the place to which such petition shall relate, or having in fact voted at the election to which such petition shall relate, to object to the parties or either of them who shall have entered into any such recognizance, on the same grounds as those on which sureties entering into recognizances in the case of election petitions may be objected to, provided, that the ground of objection shall be stated in writing under the hand of the objecting party, or his or their agent, and shall be delivered to the examiner of recognizances within ten days after the day of the date of the *Gazette* in which such notice as aforesaid shall be inserted, if the party objected to reside in England, or within fourteen days after such date if the party objected to reside in Scotland or Ireland.

Proceedings for determining objections to recognizances.

XII. And be it enacted, that for the purpose of ascertaining and reporting upon the sufficiency of the parties who shall have entered into any such recognizance, such recognizance shall be dealt with in all respects as recognizances entered into by sureties in the case of election petitions; and all the provisions of the said act of the fifth year of her present Majesty, or of any other act for the time being in force for regulating the trial of controverted elections, which relate to the mode of taking objections to sureties and to the proceedings consequential thereon, shall be applicable and in force with regard to the recognizances required to be entered into under the provisions of this act.

Committees under this act not to have power to affect the seat in Parliament.

XIII. Provided always, and it is hereby enacted and declared, that no committee who shall reassemble under the provisions hereinbefore contained, nor any committee appointed to investigate the matter of any petition which may be presented after the time limited for presenting election petitions, as herein also provided, shall possess any power or authority to determine or in any way affect the seat or return of any member or members of the House of Commons, or the issuing or restraining the issue of a writ for the election of a member or members of Parliament.

For defraying the expenses of prosecution.

XIV. And be it enacted, that upon the prosecution of any inquiry under the authority of this act by an agent appointed by the Speaker as herein is provided, every such agent is hereby authorized from time to time to certify under his hand to the commissioners of her Majesty's

Treasury what sum and sums of money is or are required to meet the necessary expences for effectually prosecuting any such inquiry, including the sums proper and necessary to be paid to and for the witnesses who may be required to attend the inquiry to which such certificate may relate; and the said commissioners of her Majesty's Treasury shall be authorized to advance to the said agent from time to time such sums as shall be needed for the purposes aforesaid, which sums, or so much thereof as shall be levied under any order for the payment of costs as hereinafter provided, shall be reimbursed to the said commissioners of her Majesty's Treasury.

XV. And be it enacted, that it shall and may be lawful for any committee reassembled as aforesaid and for every committee appointed under the authority of this act, in their discretion, to report, order, and direct that the costs, charges, and expences incurred and occasioned in and about the inquiries respectively prosecuted before any such committee, or any part or proportion thereof, shall be paid by any party, person or persons, who may have been proved before the said committee, being first duly heard, to have been guilty of bribery, or of having received bribes, or to have occasioned costs, charges, and expences to have been incurred by having brought forward frivolous and vexatious charges of bribery against any other person or persons; and the Speaker shall deliver to the agent of the House of Commons, or of the party or parties, a certificate, signed by himself, expressing the amount of the costs and expences to be paid by each of the said parties, with the name or description of the party liable to pay the same; and such certificate shall be conclusive evidence of the amount of and all other matters to establish the demand, and the liability of the several parties to pay the same.

Committee
to order by
whom costs
are to be
paid.

XVI. And be it enacted, that all costs, charges, and expences mentioned or referred to in the report of any committee made under the authority of this act shall be ascertained and allowed by the same person, and in the same manner, as the costs, charges, and expences of petitions reported to be frivolous and vexatious are now by law required to be ascertained and allowed; and all the several provisions relating to costs upon frivolous and vexatious petitions, and to the Speaker's certificate of the amount, and to the recovery thereof, shall extend to and apply, so far as may be, to costs, charges, and expences payable under the authority of this act, as fully and effectually as if the same

Costs how
to be ascer-
tained.

were re-enacted by this act, the Speaker's said certificate being hereby declared to be conclusive evidence of all and every the matters necessary to the establishment of the demand, and of the liability of all parties and persons mentioned therein as liable thereto.

Recovery
of costs.

XVII. And be it enacted, that it shall be lawful for the agent appointed by the Speaker as aforesaid, or the party or parties named in the certificate, to demand the payment of the whole amount of such taxed costs and expences, so certified as above, from any one or more of the persons herein made liable to the payment thereof, and, in case of nonpayment thereof, in his or her name to recover the same by action of debt in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, in which action it shall be sufficient for the plaintiff to declare that the defendant or defendants is or are indebted to him in the sum mentioned in the said certificate; and the said plaintiff shall, upon filing the said declaration, together with the said certificate, and affidavit of the handwriting of the Speaker thereto, be at liberty to sign judgment as for want of plea by nil dicit, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to due course of law; and no writ of error shall be allowed, and the validity of such certificate shall not be questioned, in any court, upon the allegation of any matter or thing anterior to the date thereof; and the said agent or party or parties named in the certificate shall pay over to the commissioners of her Majesty's Treasury the amount of the several sums which he or they shall recover or receive in respect of such costs in and by such action or otherwise.

Costs to be
a debt to her
Majesty.

XVIII. And be it enacted, that the amount of any costs payable to the person appointed by the attorney general as aforesaid shall, upon the issuing of the Speaker's certificate, be held and deemed a debt upon record due to her Majesty.

Persons pay-
ing costs
may recover
part from
other persons
liable there-
to.

XIX. And be it enacted, that in every case it shall be lawful for any person or persons, from whom the amount of such costs and expences shall have been so recovered, to recover in like manner from the other persons, or any of them (if such there shall be), who are jointly liable to the payment of the said costs, expences, and fees, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

XX. And whereas a practice has prevailed in certain boroughs and places of making payments by or on behalf of

candidates to the voters in such manner that doubts have been entertained whether such payments are to be deemed bribery; be it declared and enacted, that the payment or gift of any sum of money, or other valuable consideration whatsoever, to any voter, before, during, or after any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which shall be so paid or given on account of such voter having voted or having refrained from voting, or being about to vote or refrain from voting, at the said election, whether the same shall have been paid or given under the name of head money, or any other name whatsoever, and whether such payment shall have been in compliance with any usage or practice, or not, shall be deemed bribery (a).

Payment of
head money,
&c. declared
bribery.

XXI. And be it enacted, that all the foregoing provisions of this act, so far as the same are applicable thereto, shall apply to any election which may have taken place, or which may take place, after the first day of June, one thousand eight hundred and forty-two.

Act to apply
to elections
after 1st June
1842.

XXII. And whereas the provisions of an act passed in the seventh year of the reign of King William the Third, intituled "An Act for preventing Charges and Expenses in Elections of Members to serve in Parliament," have been found insufficient to prevent corrupt treating at elections, and it is expedient to extend such provisions; be it enacted, that every candidate or person elected to serve in Parliament for any county, riding or division of a county, or for any city, borough, or district of boroughs, who shall, from and after the passing of this act, by himself, or by or with any person, or in any manner, directly or indirectly, give or provide, or cause or knowingly allow to be given or provided, wholly or partly at his expense, or pay wholly or in part any expenses incurred for any meat, drink, entertainment, or provision to or for any person, at any time, either before, during, or after any such election, for the purpose of corruptly influencing such person, or any other person, to give or to refrain from giving his vote in any such election, or for the purpose of corruptly rewarding such person, or any other person, for having given or refrained from giving his vote at any such election, shall be incapable of being elected or sitting in Parliament for that county, riding or division of a county, or for that city, borough, or district of boroughs, during the Parliament for which such election shall be holden (a).

For prevent-
ing treating.
7 & 8 Wm. 3.
c. 25.

(a) These sections are repealed by the "Corrupt Practices Prevention Act, 1854."

Act may be
amended,
&c.

XXIII. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

6 VICT. c. 18.

An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of voting, and to regulate certain Proceedings in the Election of Members to serve in Parliament for England and Wales.

[31st May, 1843.]

Register to
be conclusive
evidence of
the voter's
retaining the
same qualifi-
cation.

Proviso.

In cities and
boroughs a
continued
residence re-
quired to the
time of pol-
ling.

Clause as to
putting ques-
tions at the
poll repealed.

LXXIX. And be it enacted, that at every future election for a member or members to serve in Parliament for any county, city, or borough, the register of voters so made as aforesaid shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election: provided always, that it shall not be lawful for any person to vote at any election for a member or members for any county where the qualification annexed to the name of such person shall have appeared annexed to his name in the preceding register, and such person, on the last day of July in the year in which such register so in force was formed, shall have ceased to have such qualification, or shall not have retained so much thereof as would have entitled him to have had his name inserted in such register: provided also, that no person shall be entitled to vote at any future election for a member or members to serve in Parliament for any city or borough, unless he shall, ever since the thirty-first day of July in the year in which his name was inserted in the register of voters then in force, have resided and at the time of voting shall continue to reside within the city or borough, or place sharing in the election for the city or borough, in the election for which he shall claim to be entitled to vote, or within the distance thereof required by the said recited act to entitle such person to be registered in any year.

LXXX. "And whereas by the said first-recited act it is enacted, that certain questions might be put to every voter at the time of his tendering his vote in any election: and whereas it is expedient that all the provisions contained in

the said recited act touching and concerning the said questions, and administering and taking of any oath at the time of polling, should be repealed, and other provisions be enacted in lieu thereof;" be it therefore enacted, that the said provisions shall be and the same are hereby repealed.

LXXXI. And be it enacted, that in all elections whatever of a member or members to serve in Parliament for any county, riding, parts, or division of a county, or for any city or borough in England or Wales, or the town of Berwick-upon-Tweed, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; (that is to say), that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions or either of them :

No inquiry at time of election except as to identity of the voter, and whether he has already voted.

1. Are you the same person whose name appears as *A. B.* on the register of voters now in force for the county of *[or for the riding, parts, or division of the county of]*, or for the city *[or borough]* of *[as the case may be]*?
2. Have you already voted, either here or elsewhere, at this election for the county of *[or for the riding, parts, or division of the county of]*, or for the city *[or borough]* of *[as the case may be]*?

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanor, and shall and may be indicted and punished accordingly; and the returning officer or his deputy, or a commissioner or commissioners to be for that purpose by law appointed, shall, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form :

" You do swear *[or affirm, as the case may be]*, That you are the same person whose name appears as *A. B.* on the register of voters now in force for the county of *[or for the riding, parts, or division of the county of]*, or for the city or borough of *[as the case may be]*, and that you have not before voted, either here or elsewhere, at the present election for the county of *[or for the riding, parts, or division of the county of]* or for the city or borough of *[as the case may be]*.

Oath to be taken, if required.

So help you God."

No other
oath to be
taken.

LXXXII. And be it enacted, that, save as aforesaid, it shall not be lawful to require any voter at any election whatever of a member or members to serve in Parliament to take any oath or affirmation, either in proof of his freehold, or of his residence, age, or other qualification or right to vote, any law or statute, local or general, to the contrary notwithstanding; nor to reject any vote tendered at such election by any person whose name shall be upon the register of voters in force for the time being, except by reason of its appearing to the returning officer or his deputy, upon putting such questions as aforesaid, or either of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he had previously voted at the same election, or except by reason of such person refusing to answer the said questions or either of them, or to take the said oath, or make the said affirmation, or to take or make the oath or affirmation against bribery; and no scrutiny shall hereafter be allowed by or before any returning officer with regard to any vote given or tendered at any such election; any law, statute, or usage to the contrary notwithstanding.

No scrutiny
to be allowed.

Persons
personating
voters to be
guilty of a
misdemeanor.

LXXXIII. And be it enacted, that if at any election of a member or members to serve in Parliament for any county, city, or borough any person shall knowingly personate and falsely assume to vote in the name of any other person whose name appears on the register of voters then in force for any such county, city, or borough, whether such other person shall then be living or dead, or if the name of the said other person be the name of a fictitious person, every such person shall be guilty of a misdemeanor, and on being convicted thereof shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

Alders and
abettors to
be punished
as principals.

LXXXIV. And be it enacted, that every person who shall aid, abet, counsel, or procure the commission of any such last mentioned misdemeanor shall be liable to be indicted and punished as a principal offender.

Agents may
be appointed
by candidates
to detect personation
at the time of polling.

LXXXV. And for the more effectual detection of the personation of voters at elections, be it enacted, that it shall be lawful for any candidate at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give

notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

LXXXVI. And be it enacted, that if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him; but the said returning officer, or his deputy, shall cause the words, "protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book.

Returning officer may order persons charged with personation to be taken into custody.

Vote not to be rejected if questions answered in the affirmative.

LXXXVII. And be it enacted, that every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid; provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which the said person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a

Persons charged with personation to be taken before two justices.

Bail to be taken in certain cases.

recognizance with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll then such person shall forthwith be discharged from custody: provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

If justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial.

LXXXVIII. And be it enacted, that if on the hearing of the said charge the said two justices shall be satisfied upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this act, and is not in fact, the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanors.

If justices are satisfied that the charge is unfounded, they are to order compensation.

LXXXIX. And be it enacted, that if the said justice shall on the hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods

or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of her Majesty's superior Courts of Record at Westminster: provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.

If party falsely charged accepts compensation, no action to be brought.

XC. And be it enacted, that it shall and may be lawful for the high sheriff of any county, and for the mayor or returning officer of any city or borough, and he and they are hereby required, for the purposes aforesaid, to provide a sufficient attendance of constables or peace officers in each booth at the different polling places within their respective counties, cities, or boroughs.

Sheriffs and returning officers to provide constables.

XCI. And be it enacted, that in case the vote of any person shall have been received, and any other person shall afterwards tender his vote as being registered in respect of the same qualification, stating at the time the name or names of the candidate or candidates for whom he tenders such vote, the returning officer, or his deputy, shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election; provided such person shall duly answer the questions hereinbefore authorized to be put to any voter at the time of tendering his vote.

Duty of returning officer where vote has been received, and another party tenders in respect of same qualification.

XCII. And be it enacted, that in the city of London the returning officer or officers shall take the poll or votes of such freemen of the said city, being liverymen of the several companies, as are entitled to vote at such election, in the Guildhall of the said city, and shall not be required to provide for them any booth or compartment, but shall take one poll for the whole number of such liverymen at the same place.

Liverymen of London to poll in the Guildhall.

XCIII. "And whereas it is enacted by the said first

For provid-
ing for the
safe custody
of poll books.

recited act, that at every contested election for any county, riding, or division of a county, city, or borough in England, except the borough of Monmouth, the sheriff, under sheriff, or returning officer should, on the day therein mentioned, after the close of the poll, openly break the seals on the several poll books, and cast up the number of votes as they appear on the said several books, and openly declare the state of the poll, and make proclamation of the member or members chosen, not later than the time therein mentioned: and whereas no adequate provision has been made for the safe custody and production of the said poll books subsequent to such declaration of the poll and proclamation of the members chosen at any contested election, in consequence whereof great mischief and expence have arisen in cases of disputed returns of members to serve in Parliament:" be it therefore enacted, That at every contested election of a member or members to serve in Parliament for any county, riding, parts, or division of a county, or for any city or borough in England or Wales, or for the town of Berwick-upon-Tweed, the sheriff, under sheriff, or returning officer, after having declared the state of the poll, and made proclamation of the member or members chosen to serve in Parliament in the manner provided for by the said hereinbefore in part recited act, shall forthwith enclose and seal up the several poll books, and tender the same to each of the candidates, to be sealed by them respectively; and in case any candidates shall neglect or refuse to seal the same, the sheriff, under sheriff, or returning officer shall thereupon indorse on one of the said poll books the fact of such neglect or refusal; and every such sheriff, under sheriff, or other returning officer shall, by himself or his agent, as soon as possible after such proclamation as aforesaid, deliver the same poll books, so sealed as aforesaid, to the clerk of the crown in the High Court of Chancery, or his deputy, or deliver the same, directed to the said clerk of the crown, to the postmaster or deputy postmaster of the city, town, or place wherein such proclamation shall have been made as aforesaid, who on receipt thereof shall give an acknowledgment in writing of such receipt to such sheriff, under sheriff, or returning officer, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment, signed by such sheriff, under sheriff, or returning officer; and the said postmaster or deputy postmaster shall despatch all such poll books, so sealed and directed as aforesaid, by the first post or mail after the receipt thereof, to

the general post office in London; and the postmaster or postmasters general are hereby directed, immediately on receipt of such poll books to convey the same to the crown office, and to deliver the same there, so sealed as aforesaid, to the said clerk of the crown or his deputy; and the said clerk of the crown or his deputy is hereby required to give to such postmaster or postmasters general, sheriff, under sheriff, returning officer, or agent delivering the same, a memorandum in writing, acknowledging the receipt of such poll books, and setting forth the day and hour when the same were delivered at the crown office; and the said clerk of the crown or his deputy is hereby required, immediately on receipt of such poll books, to register the same in the books of the said crown office, and to indorse thereon the day and hour upon which he received the same; and every such sheriff, under sheriff, or returning officer is hereby required, at the time of transmitting such poll books as aforesaid through the post office, to address and forward a letter by the same post or mail to the said clerk of the crown, informing him of such transmission, and giving the number and description of such poll books so transmitted.

XCIV. And be it enacted, that office copies issued by the said clerk of the crown or his deputy, of such poll books, shall be taken in evidence in all courts of law, in actions for bribery or personation, or for any other purpose whatsoever.

Office copies of poll books to be received in evidence in courts.

XCV. And be it enacted, that the said clerk of the crown shall keep and preserve the said several poll books, and shall deliver to any party applying for the same, an office copy of all or any part of such poll books on payment of a reasonable charge for writing the same, and shall also permit any party to inspect such poll books.

Clerk of the Crown to preserve poll books, and deliver office copies, if required;

XCVI. And be it enacted, that the said clerk of the crown shall, upon receiving a warrant, signed by the chairman of any committee of the House of Commons appointed for the trial of controverted elections, produce, by himself or his agent, before such committee, the said several books so deposited with him as aforesaid, and such production shall be sufficient *prima facie* proof of the authenticity of the said poll books.

and to produce them before election committee, if required.

XCVII. And be it enacted, that every sheriff, under sheriff, clerk of the peace, town clerk, secondary, returning officer, clerk of the crown, postmaster, overseer, or other person, or public officer, required by this act to do any matter or thing, shall for every wilful misfeasance, or wilful act

Parties willfully contravening the act liable to an action for debt.

of commission or omission contrary to this act, forfeit to any party aggrieved the penal sum of one hundred pounds, or such less sum as the jury before whom may be tried any action to be brought for the recovery of the before mentioned sum shall consider just to be paid to such party, to be recovered by such party, with full costs of suit, by action for debt in any of her Majesty's superior courts at Westminster: provided always, that nothing herein contained shall be construed to supersede any remedy or action against any returning officer according to any law now in force.

Power to
committees
on election
petitions to
decide as to
right of
voting.

XCVIII. "And whereas in and by the said first-recited act it is provided that upon petition to the House of Commons, complaining of an undue election or return of any member or members to serve in Parliament, any petitioner, or any person defending such election or return, shall be at liberty to impeach the correctness of the register of voters in force at the time of such election, by proving that in consequence of the decision of the barrister who shall have revised the lists of voters from which such register shall have been formed the name of any person who voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election improperly omitted from such register, and the select committee appointed for the trial of such petition shall alter the poll taken at such election according to the truth of the case, and shall report their determination thereupon to the House, and the House shall thereupon carry such determination into effect, and the return shall be amended or the election declared void, as the case may be, and the register corrected accordingly, or such other order shall be made as to the House shall seem proper: and whereas doubts have arisen as to the true intent and meaning of the said enactment with respect to the power and authority of any such committee to inquire into the validity or invalidity of the vote of any person being on the register of voters in force at the time of such election;" be it therefore declared and enacted, that it shall and may be lawful for any such committee to inquire into and decide upon the right to vote of any person who, being upon the register of voters in force at the time of such election, shall have voted in such election, or not being upon such register shall have tendered his vote at such election, in case the name of such person shall have been specially retained upon such register, or inserted therein, or expunged or omitted therefrom, by the express decision of the revising barrister who

shall have revised the lists of voters from which such register shall have been formed; and also that it shall and may be lawful for such committee to inquire into and decide upon the right to vote of any person who, being upon such register, shall have voted in such election, so far as the same may be disputed on the ground of legal incapacity at the time of his voting under and by virtue of any statute now or hereafter to be in force, or on the ground of any other legal incapacity at the time of his voting which may have arisen subsequently to the expiration of the time allowed for making out the list of voters from which the register of voters in force at the time of such election shall have been formed; but that, except in such cases or on such grounds as aforesaid, the register of voters in force at the time of such election shall, so far as regards the proceedings before such committee, be final and conclusive to all intents and purposes as to the right to vote in such election of every person who shall be upon such register.

XCIX. "And whereas it may happen that on the receipt of any writ by any sheriff or sheriffs for an election of a member or members to serve in Parliament for any city or borough the situation of returning officer may be vacant;" be it enacted, that in such case it shall be lawful for the sheriff or sheriffs whose business it may be to direct the precept for the return of a member or members to serve in Parliament for any such city or borough, by himself or themselves, or by his or their deputy, to act as returning officer for such city or borough.

Where no returning officer in cities or boroughs, sheriff may act as returning officer.

10 & 11 VICT. c. 21.

An Act to regulate the Stations of Soldiers during Parliamentary Elections.
[23rd April, 1847.]

8 Geo. 2,
c. 30.

Whereas by an act passed in the eighth year of the reign of King George the Second, intituled "An Act for regulating the quartering of Soldiers during the Time of the Elections of Members to serve in Parliament," provision is made for the removal of all soldiers quartered or billeted in any city, borough, town, or place to the distance of two or more miles, when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or of any member or members to serve in Parliament, shall be appointed to be made therein: And whereas in consequence of changes in the law for taking the poll at the election of members to serve in Parliament the expence and inconvenience of such removal of soldiers is greatly increased: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said act shall be repealed.

Repealed act
repealed.

Soldiers to
remain in
barracks or
quarters dur-
ing elections
for members
of Parliam-
ent, except
in certain
cases.

II. And be it enacted, that on every day appointed for the nomination or for the election or for taking the poll for the election of a member or members to serve in the Commons House of Parliament no soldier within two miles of any city, borough, town, or place where such nomination or election shall be declared or poll taken shall be allowed to go out of the barrack or quarters in which he is stationed, unless for the purpose of mounting or relieving guard, or for giving his vote at such election; and that every soldier allowed to go out for any such purpose within the limits aforesaid shall return to his barrack or quarters with all convenient speed as soon as his guard shall have been relieved or vote tendered.

Notice of
elections to
be given by

III. And be it enacted, that when and so often as any election of any member or members to serve in the Commons House of Parliament shall be appointed to be made,

the clerk of the crown in Chancery or other officer making out any new writ for such election shall, with all convenient speed after making out the said writ, give notice thereof to the secretary at war, or in case there shall be no secretary at war to the person officiating in his stead, who shall, at some convenient time before the day appointed for such election, give notice thereof in writing to the general officer commanding in each district of Great Britain, who shall thereupon give the necessary orders for enforcing the execution of this act in all places under his command.

the clerk of the Crown to secretary at war, &c.

IV. Provided always, and be it enacted, that nothing in this act contained shall be deemed to apply to any soldiers attending as the guards of her Majesty or any person of the royal family, or to the soldiers usually stationed or employed within the Bank of England.

Not to apply to guards attending her Majesty, &c.

V. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

Act may be amended, &c.

13 & 14 VICT. c. 68.

An Act to shorten the Duration of Elections in Ireland, and for establishing additional Places for taking the Poll thereat.

[14th August, 1850.]

“Whereas it is expedient to shorten the time now allowed by law for taking the polls at contested elections of members to serve in Parliament for the several counties, cities, towns, and boroughs in Ireland, and to divide the same into districts for the purpose of polling, and to establish a separate polling place within each such district:” Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That at every contested election of a knight or knights of the shire to serve in Parliament for any county in Ireland, which shall take place after the fifteenth day of March in the year of our Lord one thousand eight hundred and fifty-one the polling shall

At contested elections for counties polling to continue for two days only.

commence on the next day but two after the day fixed for the election, save in the cases hereinafter mentioned, at the principal place of election, and also at the several places to be appointed as hereinafter directed for taking the polls; and such polling shall continue for two days only, such days being successive days, save in the cases hereinafter mentioned, and shall commence at the hour of nine of the clock in the morning of the first day and at eight of the clock in the morning of the second day, and be kept open only between the hours of nine in the morning and four in the afternoon for the first day, and between the hours of eight in the morning and four in the afternoon of the second day; and no poll shall be kept open later than four of the clock in the afternoon of the second day, any statute to the contrary notwithstanding: Provided always, that when such day next but two after the day fixed for the election shall be Saturday, Sunday, Good Friday, or Christmas Day, then in case it be Saturday or Sunday the poll shall be on the Monday next following, and in case it be Good Friday then on the Monday next following, and in case it be Christmas Day then on the next following day, if the same shall not be Saturday or Sunday, and if it be Saturday or Sunday on the next following Monday: Provided also, that when the day following the first day of polling shall be Good Friday or Christmas Day, then in case it be Good Friday the second day of polling shall be on the Saturday next following, and in case it be Christmas Day then on the next following day, if the same shall not be Sunday, and if it be Sunday then on the next following Monday.

Counties to be divided into districts for polling according to the schedule to this act.

II. And be it enacted, that the several counties in Ireland, as mentioned in the Schedule (A) to this act annexed, shall from and after the said fifteenth day of March in the year one thousand eight hundred and fifty-one be divided into districts for polling, according to the arrangement specified in the said schedule; and that in each such district the poll shall be taken in the town or place specified in the said schedule, and that each polling district shall include the several baronies or divisions connected with the name of the same polling place in the said schedule; and each such district shall, for the purposes of this act, be called after the name of such polling place: Provided always, that so far as may be necessary for the purposes of registration of electors under an act of the present session to amend the laws which regulate the qualification and registration of Parliamentary voters in Ireland, and to alter the law for

rating immediate lessors of premises to the poor rate in certain boroughs, and not otherwise, such division as aforesaid shall take effect from the ninth day of September in the year one thousand eight hundred and fifty.

III. And be it enacted, that at every such contested election for any county in Ireland after the fifteenth day of March one thousand eight hundred and fifty-one the sheriff shall, at the place appointed for taking the poll for each such district as aforesaid, cause to be erected or provided a separate booth for each barony or half barony in such district, and shall cause to be affixed on the most conspicuous part of each such booth the name of the barony or half barony for which such booth is respectively allotted, and no person shall be admitted to vote at any such election in any booth except that allotted for the barony or half barony upon the register of which his name shall appear: Provided always, that if in any barony or half barony there shall appear upon the register thereof the names of more than six hundred electors, the sheriff shall cause so many separate booths to be erected or provided for such barony or half barony that not more than six hundred shall be required to poll in any one booth; and the sheriff shall, in case of such separate booths for the same barony or half barony, declare the initial letters of the surnames of the voters who are to vote at the same, and have such initial letters placed on the said booths under the name of the barony or half barony: Provided also, that on the requisition of any candidate, or of any elector being the proposer or seconder of any candidate, at any such contested election after the day last aforesaid, such requisition to be made or given at or before twelve of the clock at noon on the day of nomination, the booths shall be so arranged by the sheriff that not more than three hundred electors shall be allotted to poll at each such booth: Provided also, that the candidate or elector making such requisition shall pay all additional expenses occasioned by such division or arrangement.

At contested elections for counties booths to be erected so that not more than 600 be required to poll in one booth.

IV. And be it enacted, that at every such contested election as aforesaid for any county in Ireland the sheriff shall have power to appoint, and shall appoint, deputies to preside, and clerks to take the poll at the several places appointed for polling for the several baronies or half baronies as mentioned in the said schedule, and in the several polling booths, not exceeding one deputy and one poll clerk for each polling booth; and that the poll clerks employed at such several places shall at the close of each day's poll

Sheriff to appoint deputies and poll clerks for each polling booth.

enclose and seal their several books, and shall publicly deliver them so enclosed and sealed to the sheriff or sheriff's deputy presiding at such poll, who shall give a receipt for the same, and shall on the commencement of the poll on the second day deliver them back so enclosed and sealed to the person from whom he shall have received them; and on the final close of the poll every such deputy who shall have received any such poll books shall forthwith deliver the same so enclosed and sealed to the sheriff or his under sheriff, who shall receive and keep all the poll books unopened until the reassembling of the court on the day next but one after the close of the poll, unless such day shall be Sunday, and then on the Monday following, at an hour not earlier than eleven of the clock, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and shall declare the member or members chosen, at or before two of the clock in the afternoon of the said day.

Poll when to be declared.

(Cities and boroughs in schedule (B) to be divided into polling districts.

V. And be it enacted, that each of the cities, towns, and boroughs in Ireland mentioned in the schedule (B) to this act annexed shall from and after the fifteenth day of March in the year one thousand eight hundred and fifty-one be divided into polling districts, and that each of the wards into which the said cities, towns, and boroughs shall have been respectively divided for municipal purposes under the provisions of the act for the regulation of municipal corporations in Ireland, or any act amending the same, shall be a separate polling district.

List of electors of such cities, towns, &c. to be divided by wards, &c., and so printed in the register.

VI. And be it enacted, that the clerk of the peace of or acting in or for each of the said cities, towns, and boroughs mentioned in the said schedule (B) shall before the fifteenth day of March in the year one thousand eight hundred and fifty-one cause the list of voters for such city, town, or borough, duly signed by the assistant barrister, chairman, or revising barrister, upon the revision of the same, to be divided, arranged, and printed in the book of the register of voters for such city, town, or borough in manner following: (that is to say) the names of all persons appearing upon the said list as resident freemen shall be placed upon a separate list, to be entitled "The List of Resident Freemen," and shall be arranged therein in strict alphabetical order according to the first, second, and other letters of their surnames, and the names in such list of freemen shall be numbered consecutively, beginning with number one, and

the names of all persons appearing on the said list of voters, signed as aforesaid, as qualified in respect of any property qualification, or as occupiers of any lands, tenements, or hereditaments, shall be divided into lists for the respective wards, according to the number and names of the municipal wards into which each such city, town, or borough shall have been divided under the said act for the regulation of municipal corporations in Ireland, or any act amending the same; and each of such ward lists shall be headed with the name of the ward, and shall contain the names of all persons appearing upon the said list of voters signed as aforesaid as qualified in respect of any property situate within such ward, or as occupiers of any lands, tenements, or hereditaments situate within such ward; and in each such ward list the names of the persons appearing thereon shall be arranged in strict alphabetical order, according to the first, second, and other letters of the surnames, and the names in each such ward list shall be numbered consecutively, beginning with number one.

VII. And be it enacted, that in the case of any persons appearing on the said list of voters signed as aforesaid for any such city, town, or borough mentioned in the said schedule (B) as qualified in respect of any property qualification, or as occupiers of any lands, tenements, or hereditaments, not situate within the limits of any of such wards, such clerk of the peace shall insert the name of each of such last-mentioned persons in the list for the ward which the said property, or the said lands, tenements, or hereditaments, in respect of which he may be so qualified, shall most nearly adjoin; or in case the said property, lands, tenements, or hereditaments in respect of which any person may be qualified shall be situate in more than one ward, or partly within one or more ward or wards and partly without the limits of any ward, the clerk of the peace shall insert the name of any such last mentioned person in the list of such one ward in which such property, lands, tenements, or hereditaments shall be partly situate, as such clerk of the peace shall think fit.

Electors in respect of property not situate in any ward to be inserted in list of adjoining ward.

VIII. And be it enacted, that the names of all persons who shall at any time after the said fifteenth day of March, one thousand eight hundred and fifty-one be on the list of voters signed as aforesaid in each year for any such city, town, or borough mentioned in the said schedule (B) shall be divided, arranged, and printed by the said clerk of the peace in manner hereinbefore specified.

Electors for such cities, &c. hereafter to be arranged and printed in like manner.

Booths at
which free-
men and
other voters
are to give
their votes.

IX. And be it enacted, that at every contested election for any such city, town, or borough mentioned in the said schedule (B) which shall take place after the fifteenth day of March in the year one thousand eight hundred and fifty-one the persons on the register and entitled to vote thereat as resident freemen shall (save as hereinafter mentioned) vote at some booth or compartment to be erected or provided at or near the place at which the elections for such city, town, or borough, are now usually holden, and not elsewhere; and all persons on the register and entitled to vote in respect of any property qualification, or as occupiers of any lands, tenements, or hereditaments, shall vote at some booths or compartments to be erected or provided within the ward upon the list of which their names shall appear, and not elsewhere.

Freemen's
booths.

X. And be it enacted, that the sheriff or other returning officer at any such contested election for any such city, town, or borough mentioned in the said schedule (B) (save as hereinafter provided) which shall take place after the day last aforesaid shall cause a sufficient number of booths to be erected or provided at or near the place where elections for such city, town, or borough are now usually holden, to be called the Freemen's Booths, so that not more than four hundred such electors shall be allotted or obliged to poll in any one booth, and that, as far as practicable consistently with the said provision as to the number of four hundred, all such persons whose surnames shall begin with the same letter of the alphabet shall poll in the same booth or compartment: Provided always, that where the number of freemen on the register shall not exceed three hundred in number no freemen's booths shall be provided, but such freemen shall poll in such ward booths and in such proportions as the sheriff or other returning officer shall appoint and notify for such purpose.

Booths in
each ward
for other
voters.

XI. And be it enacted, that at every such contested election for any such city, town, or borough mentioned in the said schedule (B) after the day last aforesaid the sheriff or returning officer shall cause to be erected or provided within each ward thereof a sufficient number of booths or compartments, to be called the Ward Booths, for the purpose of taking the votes of all those registered electors whose names appear on the list for such ward, so as that not more than four hundred such electors shall be allotted or obliged to poll in any one booth or compartment, and that, as far as practicable consistently with the said provision as to the

number of four hundred, all such persons whose surnames shall begin with the same letter of the alphabet shall poll at the same booth or compartment.

XII. And be it enacted, that at every contested election of a member or members to serve in Parliament for any city, town, or borough in Ireland not mentioned in said schedule (B) which shall take place after the day last aforesaid the sheriff or other returning officer shall cause to be erected or provided so many booths or compartments for polling as that not more than four hundred electors shall be allotted or required to poll in each such booth or compartment, and that, as far as practicable consistently with the said provisions as to the number of four hundred, all persons whose surnames shall begin with the same letter of the alphabet shall poll in the same booth or compartment.

Polling places in cities or towns not mentioned in schedule (B).

XIII. And be it enacted, that on the requisition of any candidate, or of any elector being the proposer or seconder of any candidate, at any such contested election after the day last aforesaid for any city, town, or borough in Ireland, whether the same be mentioned in said schedule (B) or not, such requisition to be made or given at or before twelve of the clock at noon on the day of nomination, the booths or compartments shall be so arranged by the sheriff or other returning officer as that not more than two hundred electors shall be allotted to poll at each such booth or compartment: Provided always, that the candidate or elector making such requisition shall pay all additional expences occasioned by such division or arrangement.

At elections for cities and towns, on requisition of candidate, &c. not more than 200 shall poll in each booth.

XIV. And be it enacted, that at every such contested election for any city, town, or borough in Ireland, whether the same be mentioned in said schedule (B) or not, which shall take place after the said fifteenth day of March one thousand eight hundred and fifty-one, the sheriff or other returning officer shall have power to appoint, and shall appoint, a deputy to preside and a clerk to take the poll at each such booth or compartment, and shall, before the opening of the poll, deliver or cause to be delivered to each such deputy a list of the persons allotted to poll at the booth or compartment over which such deputy is to preside, with the names therein arranged in strict alphabetical order according to the first, second, and other letters of the surnames.

At such elections for cities, &c. returning officer to appoint deputy and poll clerk for each booth, and furnish list of persons to poll thereat.

XV. And be it enacted, that at every such contested election for any city, town, or borough in Ireland, whether the same be mentioned in said schedule (B) or not, which

At elections for cities and towns, commencement

and continu-
ance of poll
for one day
only.

shall take place after the said fifteenth day of March one thousand eight hundred and fifty-one, the polling shall commence at eight of the clock of the forenoon of the day next but one after the day fixed for the election; and such polling shall continue for such one day only, and no poll shall be kept open longer than five of the clock in the afternoon of such day, any statute to the contrary notwithstanding: Provided always, that when such day next but one after the day fixed for the election shall be Sunday, Good Friday, or Christmas Day, then in case it be Sunday the poll shall be on the Monday next following, and in case it be Good Friday then on the Saturday next following, and in case it be Christmas Day then on the next following day if the same shall not be Sunday, and if it be Sunday then on the next following Monday.

Duty of poll
clerks at such
elections.

XVI. And be it enacted, that at every such contested election for any city, town, or borough in Ireland, whether mentioned in the said schedule (B) or not, taking place after the said fifteenth day of March one thousand eight hundred and fifty-one, the poll clerks employed in the several booths or compartments shall at the close of the day's poll enclose and seal their several books, and shall publicly deliver them so enclosed and sealed to the sheriff's or returning officer's deputy presiding at such poll, who shall give a receipt for the same, and shall deliver the same so enclosed and sealed to the sheriff or his under sheriff or other returning officer, who shall receive and keep all the poll books unopened until the reassembling of the court on the day next after the close of the poll, unless such day shall be Sunday, and then on the Monday following, at an hour not earlier than ten of the clock, when he shall openly break the seals thereon, and cast up the number of the votes as they appear on the said several books, and shall openly declare the state of the poll, and shall declare the member or members chosen, at or before three of the clock in the afternoon of the said day.

Declaration
of poll.

Elections on
or before
15th March,
1851, and
University of
Dublin, not
to be affected.

XVII. And be it enacted, that in case any election shall take place for any county, city, town, or borough in Ireland before or on the said fifteenth day of March one thousand eight hundred and fifty-one, the poll and proceedings thereat shall be taken in the same manner as if this act had not passed; and that nothing in this act contained shall be construed to affect or apply to the borough of the University of Dublin.

Poll may be
closed in cer-

XVIII. And be it enacted, that nothing in this act contained shall prevent any sheriff or other returning officer,

or the lawful deputy of any sheriff or returning officer, from closing the poll previous to the expiration of the time fixed by this act in any case where the same might have been lawfully closed before the passing of this act; and that where the proceedings at any election after the fifteenth day of March one thousand eight hundred and fifty-one (whether such proceedings shall consist of the nomination of a candidate or candidates or of the taking of the poll) shall be interrupted or obstructed by any riot or open violence at or near the place of election or a polling place, or shall be interrupted or obstructed by any riot or open violence taking place elsewhere by the violent or forcible prevention, obstruction, or interruption of voters proceeding on their way to such election or polling place (such last-mentioned prevention, obstruction, or interruption of voters proceeding on their way as aforesaid being shown by affidavit), the sheriff or other returning officer, or the lawful deputy of any sheriff or returning officer, shall not for such cause terminate the business of such nomination, nor finally close the poll, but shall adjourn the nomination or the taking of the poll, at the particular polling place or places at or near to which or on the way to which such interruption or obstruction shall have happened until the following day, and, if necessary, shall further adjourn such nomination or poll, as the case may be, until such interruption or obstruction shall have ceased, when the sheriff or returning officer or his deputy shall again proceed with the business of the nomination, or with the taking the poll, as the case may be, at the place or places at or near to which or on the way to which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the poll shall be regulated accordingly; and any day whereon the poll shall have been so adjourned shall not, as to such place or places, be reckoned the day of polling at such election within the meaning of this act; and whenever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and the poll books delivered or transmitted to such sheriff or other returning

tain cases as
heretofore.

Proceedings
in case of
riot.

officer, anything hereinbefore or in any other statute to the contrary notwithstanding: Provided always, that this act shall not be taken to authorize an adjournment to a Sunday, but that in every case in which the day to which the adjournment would otherwise be made shall happen to be a Sunday, Good Friday, or Christmas Day, that day or days shall be passed over, and the following shall be the day to which the adjournment shall be made.

Expense of
booths.

XIX. And be it enacted, that all booths erected or provided for taking the polls at any such election shall be erected or provided by the sheriff or other returning officer at the joint expense of the candidates, except in the case when at an election for a county, city, town, or borough such requisition for additional booths as hereinbefore provided for shall have been made; subject however to the limitation hereinafter contained, (that is to say,) that the expense to be incurred for the booth or each of the booths at the principal place of election, or at any of the polling places for any county, shall not exceed the sum of three pounds if in a public building, and shall not exceed the sum of five pounds if not in a public building, and that the expenses to be incurred for any booth or compartment in any city, town, or borough shall not exceed the sum of three pounds if in a public building, and shall not exceed the sum of five pounds if not in a public building; and that all deputies appointed by the sheriff or other returning officer shall be paid each two pounds a day, and no more, and each poll clerk shall be paid one pound a day, at the expense of the candidates: Provided always, that if any candidate shall be proposed without his consent, the person proposing him shall be liable for his share of the expenses as if he had been a candidate: Provided also that the sheriff or other returning officer may, if he think fit, instead of erecting such booth or booths as aforesaid, hire any houses or other buildings for the purpose of taking the poll therein; subject however to the limitations as to expense hereinbefore contained.

Payment to
deputies and
poll clerks.

Lists of elec-
tors for each
booth, and
notice of
situation of
booths

XX. And be it enacted, that the sheriff or other returning officer shall before the day fixed for the polling at any such election cause to be provided for the use of each booth a true copy of the register or list of electors, so far as such electors are allotted or appointed to vote at such booth, in strict alphabetical order according to the first, second, and other letters of their surnames, and shall under his hand certify every such copy to be true, and shall also cause to be made out and printed a statement or specification of the local situations of the different booths, and a

the division or description of the electors allotted to poll at each booth, and shall give thereto full publicity, by posting and otherwise, and shall cause to be affixed to each booth, in large letters, on some conspicuous part thereof, a notice of the division or description of the electors allotted to poll thereat.

XXI. And be it enacted, that no candidate at any such election after the fifteenth day of March one thousand eight hundred and fifty-one shall be liable to pay or to contribute to the payment of the fee of any assessor appointed by the sheriff or other returning officer.

No candidate to be liable to pay fee of assessor.

XXII. And whereas it is expedient to provide for increasing the number of polling places, and for altering polling districts: Be it therefore enacted, that it shall be lawful for the lord lieutenant or other chief governor or governors of Ireland, by and with the advice of the privy council in Ireland, from time to time hereafter, on petition from the justices of any county or riding in Ireland in quarter sessions assembled, representing that the number of polling places for such county or riding is insufficient, and praying that the place or places mentioned in the said petition may be a polling place or polling places for the county or riding within which such place or places is or are situate, and that a barony or baronies, half barony or half baronies in such petition mentioned may constitute a district for polling at such polling place, (but so as not to divide any barony or half barony,) or praying that any polling district or districts may be altered, and that any barony or half barony may be detached from any such polling district, and be annexed to any other polling district, as the case may be, to declare that any place or places mentioned in the said petition shall be a polling place or polling places for that county or riding, and that the barony or baronies, half barony or half baronies in such petition mentioned shall constitute a district for polling at such polling place, and that the other polling districts of the said county or riding shall be altered accordingly, or to declare that any polling district or districts shall be altered, and that any barony or half barony shall be detached from any such polling district, and be annexed to any other polling district; and every such declaration or order for creating additional polling places, and the polling districts for the same, or for altering any polling district or districts, shall be certified under the hand of the clerk of the said privy council, and, when so certified, shall be published in the *Dublin Gazette*, and shall

Additional polling places may be appointed upon petition from justices in quarter sessions assembled.

be of the same force and effect as if the same had been made by the authority of Parliament: Provided always, that no such petition as aforesaid shall be made by such justices so assembled unless a notice in writing shall have been delivered, one month at the least before the holding of such quarter sessions, to the clerk of the peace of the county or riding wherein the same are held, signed by two justices of the peace for such county or riding, and residing therein, or by ten inhabitants being registered voters for such county or riding, which notice shall state that the court will, when such sessions are held, be moved to make such petition, nor unless the clerk of the peace shall, ten days at the least before the holding of such sessions, have caused a copy of such notice to be inserted twice at the least in two of the newspapers of such county or riding, if two newspapers are published therein, or if not, in a newspaper published or commonly circulated therein, together with a notice of the day upon which and the place at which such quarter sessions will be held: Provided also, that when such motion is made, any person objecting to the same shall be heard by such court against the same, or any part thereof, if he thinks fit.

Repeal of
10 & 11 Vict.
c. 81, after
this act
comes into
operation.

XXIII. And be it enacted, that from and after the fifteenth day of March in the year one thousand eight hundred and fifty-one, an act of the tenth and eleventh years of the reign of her present Majesty, intituled "An Act to limit the Time for taking the Poll at Elections of Members to serve in Parliament for Counties of Cities, Counties of Towns, and Boroughs in Ireland," shall be repealed, save so far as the same repeals any other act or acts.

Interpreta-
tion of terms.

XXIV. And be it enacted, that in the construction of this act the word city shall be deemed to mean a county or a city or a county and city: and the word town shall be deemed to mean a county of a town; and the word barony shall be deemed to include half barony or division.

Schedules to
be part of
act.

XXV. And be it enacted, that the schedules annexed to this act shall be deemed part of this act.

Act may be
amended, &c.

XXVI. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament.

13 & 14 VICT. c. 69.

An Act to amend the Laws which regulate the Qualification and Registration of Parliamentary Voters in Ireland, and to alter the Law for rating Immediate Lessors of Premises to the Poor Rate in certain Boroughs.

[14th August, 1850.]

LXXXV. And be it enacted, that at every election of a member or members to serve in Parliament for any county, city, town, or borough in Ireland, holden after the fifteenth day of March one thousand eight hundred and fifty-one, the register of voters so made as aforesaid under this act shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election.

Register to be conclusive evidence of right to vote.

LXXXVI. Provided always, and be it enacted, that any person whose name shall have been omitted from any register of voters in consequence of the decision of the barrister who shall have revised the lists from which such register shall have been formed may tender his vote at any election at which such register shall be in force, stating at the time the name or names of the candidate or candidates for whom he tenders such vote, and the returning officer or his deputy shall not admit and allow such vote, but shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election.

Persons rejected by barrister may tender their votes.

LXXXVII. Provided also, and be it enacted, that in the case of any voter whose qualification appearing on the register of voters in force at any such election shall be the occupation of lands, tenements, or hereditaments rated as of the net annual value of twelve pounds or upwards or eight pounds or upwards, as the case may be, when any such voter shall have voted at any such election, no subsequent diminution of the valuation or rate of or on such respective premises upon an appeal against the rate, and no subsequent

In the case of rated occupiers, the diminution of value on appeal, or the quashing of the rate after a vote given at an election, not to invalidate such vote.

quashing of such rate, shall upon petition to the House of Commons or otherwise invalidate the vote given at such election by such voter who shall be so on the register of voters then in force as aforesaid, and shall at the time of voting be in the occupation of the said premises.

No inquiry at election, except as to identity of voter, and whether he has already voted.

LXXXVIII. And be it enacted, that in all elections whatever of a member or members to serve in Parliament for any county, or for any city, town, or borough, in Ireland, holden after the fifteenth day of March one thousand eight hundred and fifty-one, no inquiry shall be permitted at the time of polling as to the right of any person to vote, nor any objection thereto made or received by any returning officer or his deputy, except only as follows; (that is to say,) that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them:

1. "Are you same person whose name appears as *A. B.* on the register of voters now in force for the county of [or for the city or town or borough of *as the case may be*]?"
2. "Have you already voted, either here or elsewhere, at this election for the county of [or for the city or town or borough of *as the case may be*]?"

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanor, and shall and may be indicted and punished accordingly; and the returning officer or his deputy, or a commissioner or commissioners (whom the returning officer is hereby authorized, if he shall think fit, to appoint for that purpose), shall, if required on behalf of any candidate at the time aforesaid, administer an oath, (or in case of a Quaker, Moravian, or Separatist) an affirmation, to any voter, in the following form:

"You do swear [or affirm, *as the case may be*,] that you are the same person whose name appears as *A. B.* on the register of voters now in force for the county of [or for the city or town or borough of *as the case may be*], and that you have not before voted, either here or elsewhere, at the present election for the county of [or for the city or town or borough of *as the case may be*].

So help your God."

LXXXIX. And be it enacted, that, save as aforesaid, it shall not be lawful to require any voter at any election whatever of a member or members to serve in Parliament holden after the fifteenth day of March one thousand eight hundred and fifty-one, to take any oath or affirmation, either in proof of his freehold, occupation, or of his residence, age, or other qualification or right to vote, or of his qualification continuing, or of his not owing any cesses, rates, or taxes whatsoever, any law or statute, local or general, to the contrary notwithstanding, nor to reject any vote tendered at such election by any person whose name shall be upon the register of voters in force for the time being, except by reason of its appearing to the returning officer or his deputy, upon putting such questions as aforesaid or either of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he had previously voted at the same election, or except by reason of such person refusing to answer the said questions or either of them, or to take the said oath or make the said affirmation, or to take or make the oath or affirmation against bribery; and no scrutiny shall hereafter be allowed by or before any returning officer with regard to any vote given or tendered at any such election, any law, statute, or usage to the contrary notwithstanding.

No other oath
to be taken.

XC. And be it enacted, that if at any election of a member or members to serve in Parliament for any county, city, town, or borough in Ireland holden at any time after the fifteenth day of March one thousand eight hundred and fifty-one any person shall knowingly personate and falsely assume to vote in the name of any other person registered under the provisions of the said recited act to amend the representation of the people of Ireland, or whose name appears on the register of voters then in force for any such county, city, town, or borough, whether such other person shall then be living or dead, or if the name of the said other person be the name of a fictitious person, every such person shall be guilty of a misdemeanor, and on being convicted thereof shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

Persons
personating
voters guilty
of a mis-
demeanor.

XCI. And be it enacted, that every person who shall aid, abet, counsel, or procure the commission of any such last-mentioned misdemeanor shall be liable to be indicted and punished as a principal offender.

Abettors
punishable as
principals.

XCII. And for the more effectual detection of the personation of voters at elections, be it enacted, that it shall be

Agents to de-
tect personat-

tion may be
appointed.

lawful for any candidate at any election of a member or members to serve in Parliament for any county, city, town, or borough in Ireland holden after the fifteenth day of March one thousand eight hundred and fifty-one, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents in his behalf, to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer or his respective deputy of the name and address of the person or persons so appointed by him to act as agents for such purpose, and thereupon it shall be lawful for every such agent to attend, during the time of polling, at the booth or booths for which he shall have been so appointed.

Persons
charged with
personation
of voters may
be taken into
custody:

XCIII. And be it enacted, that if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer or his respective deputy presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: provided always, that nothing herein contained shall be construed or taken to authorize any returning officer or his deputy to reject the vote of any person who shall answer in the affirmative the questions authorized by this act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him, but the said returning officer or his deputy shall cause the words "protested against for personation" to be placed against the vote of the person so charged with personation when entered in the poll book.

and brought
before two
justices.

XCIV. And be it enacted, that every such constable or peace officer shall take the person so in his custody, at the earliest convenient time before some two justices of the peace acting in and for the county, city, town, or borough within which the said person shall have so voted as aforesaid: provided always, that in case the attendance of two

such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid; and such justice is hereby authorized and required to liberate such person, on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll, then such person shall forthwith be discharged from custody: provided also, that if, in consequence of the absence of such justices as aforesaid, or from any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

XCV. And be it enacted, that if on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, town, or borough within which the offence was committed, to take his trial, according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial, as in the case of other misdemeanors.

Offenders
may be com-
mitted for
trial.

XCVI. And be it enacted, that if the said justices shall, on the hearing of the said charge, be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices and they are hereby required to make an order in writing under their hands on the said agent so declaring as aforesaid to pay to the said person so falsely charged, if he

Justices may
award com-
pensation to
persons
unjustly
charged.

shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, by civil bill, or with full costs of suit, in an action of debt to be brought in any one of her Majesty's Superior Courts of Record at Dublin: provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered, to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.

Power to provide a sufficient attendance of constables at polling places.

XCVII. And be it enacted, that it shall and may be lawful for the high sheriff of any county, and for the mayor or returning officer of any city, town, or borough, and he and they are hereby required, for the purposes aforesaid, to provide a sufficient attendance of constables or peace officers in each booth at the different polling places within their respective counties, cities, towns, or boroughs.

Duty of returning officer when vote has been received, and another party tenders in respect of the same qualification.

XCVIII. And be it enacted, that in case the vote of any person shall have been received, and any other person shall afterwards tender his vote as being registered in respect of the same qualification, stating at the time the name or names of the candidate or candidates for whom he tenders such vote, the returning officer or his deputy shall not admit or allow such vote, but shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election; provided such person shall, at any election holden on or before the said fifteenth day of March one thousand eight hundred and fifty-one.

take the oath now by law to be administered, or at any election holden after the said fifteenth day of March one thousand eight hundred and fifty-one duly answer the questions or take the oath hereinbefore authorized to be put to any voter at the time of tendering his vote.

XCIX. And whereas it is expedient to make better provision than that now by law made for the safe custody and production of the poll books at elections subsequent to the final close of the poll: be it therefore enacted, that at every contested election of the member or members to serve in Parliament for any county, or for any city, town, or borough, in Ireland, holden after the commencement of this act, the sheriff, under sheriff, or returning officer, after having declared the state of the poll and made proclamation of the member or members chosen to serve in Parliament, shall, anything in any act or acts now in force in Ireland to the contrary notwithstanding, forthwith enclose and seal up the several poll books, and tender the same to each of the candidates to be sealed by them respectively; and in case any candidate shall neglect or refuse to seal the same, the sheriff, under sheriff, or returning officer shall thereupon endorse on one of the said poll books the fact of such neglect or refusal; and every such sheriff, under sheriff, or other returning officer shall, by himself or his agent, as soon as possible after such proclamation as aforesaid, deliver the same poll books, so sealed as aforesaid, to the clerk of the Crown and Hanaper, in the High Court of Chancery in Ireland, or his deputy, or deliver the same directed to the said clerk of the Crown and Hanaper, to the postmaster or deputy postmaster of the city, town, or place wherein such proclamation shall have been made as aforesaid, who on receipt thereof shall give an acknowledgment in writing of such receipt to such sheriff, under sheriff, or returning officer, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment, signed by such sheriff, under sheriff, or returning officer; and the said postmaster or deputy postmaster shall despatch all such poll books, so sealed and directed as aforesaid, by the first post or mail after the receipt thereof, to the General Post Office in Dublin; and the postmaster or postmaster general are hereby directed, immediately on the receipt of such poll books, to convey the same to the Crown and Hanaper Office, and to deliver the same there, so sealed as aforesaid, to the said clerk of the Crown and Hanaper, or his deputy; and the said clerk of the Crown and Hanaper, or his deputy, is hereby required

Provision for
custody of
poll books.

to give to such postmaster or postmaster general, sheriff, under sheriff, returning officer, or agent delivering the same, a memorandum in writing acknowledging the receipt of such poll books and setting forth the day and hour when the same were delivered at the Crown and Hanaper Office; and the said clerk of the Crown and Hanaper, or his deputy, is hereby required, immediately on receipt of such poll books, to register the same in the books of the said Crown and Hanaper Office, and to endorse thereon the day and hour upon which he received the same; and every such sheriff, under sheriff, or returning officer is hereby required, at the time of transmitting such poll books as aforesaid through the post office, to address and forward a letter by the same post or mail to the said clerk of the Crown and Hanaper, informing him of such transmission, and giving the number and description of such poll books so transmitted.

Office copies evidence.

C. And be it enacted, that office copies issued by the said clerk of the Crown and Hanaper, or his deputy, of such poll books, shall be received and taken in evidence in all courts of law in actions for bribery or personation, or for any other purpose whatsoever.

Clerk of Crown and Hanaper shall keep poll books:

CI. And be it enacted, that the said clerk of the Crown and Hanaper shall keep and preserve the said several poll books, and shall deliver to any party applying for the same an office copy of all or any part of such poll books, on payment of a reasonable charge for writing the same, and shall also permit any party to inspect such poll books.

and produce them before committee of House of Commons, when required.

CII. And be it enacted, that the said clerk of the Crown and Hanaper shall, upon receiving a warrant signed by the chairman of any committee of the House of Commons appointed for the trial of controverted elections, produce by himself or his agent before such committee the said several books so deposited with him as aforesaid; and such production shall be sufficient *prima facie* proof of the authenticity of the said poll books: provided always, that in case of the temporary absence or sickness of the clerk of the Crown and Hanaper, his chief assistant in his office shall and may be authorized to act in his place for the purposes of this act.

Officers liable to action for breach of duty.

CIII. And be it enacted, that every sheriff, under sheriff, clerk of the peace, town clerk, clerk of the union, high constable, returning officer, clerk of the Crown and Hanaper, postmaster, or other person or public officer required by this act to do any matter or thing, shall for every wilful misfeasance or wilful act of commission or omission contrary

to this act forfeit to any party aggrieved the penal sum of one hundred pounds, or such less sum as the jury before whom may be tried any action to be brought for the recovery of the before mentioned sum shall consider just to be paid to such party, to be recovered by such party, with full costs of suit, by action of debt in any of her Majesty's Superior Courts in Dublin: provided always, that nothing herein contained shall be construed to supersede any remedy or action against any returning officer according to any law now in force.

CIV. And be it enacted, that upon petition to the House of Commons complaining of any undue election or return of any member or members to serve in Parliament for any county, city, town, or borough in Ireland, after the said fifteenth day of March one thousand eight hundred and fifty-one, it shall and may be lawful for the select committee appointed for the trial of such petition to inquire into and decide upon the right to vote of any person who, being upon the register of voters in force at the time of such election, shall have voted in such election, or, not being upon such register, shall have tendered his vote at such election, in case the name of such person shall have been specially retained upon such register, or inserted therein, or expunged or omitted therefrom, by the express decision of the assistant barrister who shall have revised the lists of voters from which such register shall have been formed; and also that it shall and may be lawful for such committee to inquire into and decide upon the right to vote of any person who, being upon such register, shall have voted in such election, so far as the same may be disputed on the ground of legal incapacity at the time of his voting under and by virtue of any statute now or hereafter to be in force, or on the ground of any other legal incapacity at the time of his voting which may have arisen subsequently to the expiration of the time allowed for making out the list of voters from which the register of voters in force at the time of such election shall have been formed; but that, except in such cases or on such grounds as aforesaid, the register of voters in force at the time of such election shall, so far as regards the proceedings before such committee, be final and conclusive, to all intents and purposes, as to the right to vote in such election of every person who shall be upon such register.

Powers of select committee of House of Commons on petition in respect of right of voting.

CV. And be it enacted, that it shall and may be lawful for such select committee, in such cases or on such grounds, Select committee may

correct poll
and register
in certain
cases.

to alter the poll taken at such election, according to the truth of the case; and that they shall report the determination thereupon to the House, and the House shall thereupon carry such determination into effect, and the return shall be amended or the election declared void, as the case may be, and the register corrected accordingly; or such other order shall be made as to the House may seem proper.

15 & 16 VICT. c. 23.

An Act to shorten the Time required for assembling Parliament after a Dissolution thereof. [17th June, 1852.]

Parliament
may be ap-
pointed to
meet 35 days
after the date
of the pro-
clamation.

Whereas the time required by law to intervene between the date of the proclamation for assembling Parliament and the day appointed for the meeting thereof may be reasonably shortened: Be it declared and enacted, therefore, by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that so often as her Majesty shall, by her royal proclamation, appoint a time for the first meeting of the Parliament of the United Kingdom of Great Britain and Ireland after a dissolution thereof, the time so to be appointed may be any time not less than thirty-five days after the date of such proclamation, the act of the fifth year of Queen Anne, chapter eight, or the act of the seventh and eighth years of William the Third, chapter twenty-five, or any other law or usage, to the contrary notwithstanding.

15 & 16 VICT. c. 57.

An Act to provide for more effectual Inquiry into the Existence of corrupt Practices at Elections for Members to serve in Parliament. [30th June, 1852.]

Whereas it is expedient to make more effectual provision for inquiring into the existence of corrupt practices at elections of members to serve in Parliament: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. Where by a joint address of both Houses of Parliament it shall be represented to her Majesty that a committee of the House of Commons appointed to try an election petition, or a committee of that House appointed to inquire into the existence of corrupt practices in any election or elections of a member or members to serve in Parliament, have reported to the House that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county, division of a county, city, borough, university, or place in the United Kingdom electing or sharing in the election of a member or members to serve in Parliament, at any election or elections of such members or member, and the said Houses shall thereupon pray her Majesty to cause inquiry to be made under this act, by persons named in such address, such persons being (where the inquiry to be made relates to a place in England or Ireland) barristers-at-law of not less than seven years standing, or (where such inquiry relates to a place in Scotland) advocates, of not less than seven years standing, and not being members of Parliament, or holding any office or place of profit under the Crown, other than that of a recorder of any city or borough, it shall be lawful for her Majesty, by warrant under her royal sign manual, to appoint the said persons to be commissioners for the purpose of making inquiry into the existence of such corrupt practices; and in case any of the commissioners so appointed die, resign, or become incapable to act, it shall

Upon address of Houses of Parliament, her Majesty may appoint commissioners to make inquiry into corrupt practices at elections.

be lawful for the surviving or continuing commissioners or commissioner to act in such inquiry as if they or he had been solely appointed to be commissioners or a sole commissioner for the purposes of such inquiry, and (as to such sole commissioner) as if this act had authorized the appointment of a sole commissioner; and all the provisions of this act concerning the commissioners appointed to make any such inquiry shall be taken to apply to such surviving or continuing commissioner or commissioners.

Commissioners to be sworn.

II. Every commissioner appointed in pursuance of this act shall, before beginning to act in the execution of this act, take the following oath: (that is to say,)

I *A. B.* do swear, that I will truly and faithfully execute the powers and trusts vested in me by an act intituled [here insert the title of the act], according to the best of my knowledge and judgment.

So help me God.

And every such commissioner appointed in England or Ireland shall take such oath before a justice of the Court of Queen's Bench or Common Pleas, or a baron of the Court of Exchequer, in England or Ireland respectively; and every such commissioner appointed in Scotland shall take such oath before a judge of the Court of Session in Scotland.

Secretary and clerks to be appointed.

III. It shall be lawful for any commissioners appointed under this act to appoint, and at their pleasure to dismiss, a secretary, and so many clerks, messengers, and officers as shall be thought necessary by one of her Majesty's principal secretaries of state, for the purpose of conducting the inquiry to be made by them, and to pay to such secretary, clerks, messengers, and officers such salaries and allowances as shall be thought reasonable by the commissioners of her Majesty's Treasury.

Place of meeting.

IV. The commissioners appointed under this act to make inquiry as aforesaid in relation to any county, division of a county, city, borough, university, or place shall, upon their appointment, or within a reasonable time afterwards, go to such county, division of a county, city, borough, university, or place, and shall from time to time hold meetings for the purposes of such inquiry at some convenient place within the same, or within ten miles thereof, and shall have power to adjourn such meetings from time to time, and from any one place to any other place within such county, division of a county, city, borough, university, or place, or within ten miles thereof, as to them may seem expedient; and such commissioners shall give notice of their appointment, and of

the time and place of holding their first meeting, by publishing the same in some newspaper in general circulation in such county, division of a county, city, borough, university, or place, or the neighbourhood thereof: Provided always, that such commissioners shall not adjourn the inquiry for any period exceeding one week, without the consent and approbation of one of her Majesty's principal secretaries of state.

V. Provided also, that it shall be lawful for the said commissioners, with such consent and approbation as aforesaid, to hold meetings of the said commissioners in the cities of London or Westminster, and to adjourn the same from time to time, as they may deem fit.

Commissioners may hold meetings in London or Westminster.

VI. Such commissioners shall, by all such lawful means as to them appear best, with a view to the discovery of the truth, inquire into the manner in which the election in relation to which such committee as aforesaid may have reported to the House of Commons, or where the report of such committee has referred to two or more elections, the latest of such elections, has been conducted, and whether any corrupt practices have been committed at such election, and if so, whether by way of the gift or loan or the promise of the gift or loan of any sum of money or other valuable consideration to any voter or voters, or to any other person or persons on his or their behalf, for the promise or the giving of his or their vote or votes, or for his or their refraining or promising to refrain from giving his or their vote or votes, at such election, or for his or their procuring or undertaking to procure the votes of other electors at such election, or whether by the payment of any sum of money or loan or other valuable consideration whatsoever to any voter, or to any other person on his behalf, before, during, or after the termination of such election, by way of head money, or in compliance with any usage or custom in the county, division of a county, city, borough, university, or place to which the inquiry relates, or how otherwise, or whether any sum of money or other valuable consideration whatsoever has been paid to any voter, or to any other person on his behalf, after the termination of such election, as a reward for giving or for having refrained from giving his vote at such election; and in case such commissioners find that corrupt practices have been committed at the election into which they are hereinbefore authorized to inquire, it shall be lawful for them to make the like inquiries concerning the latest previous election for the same

Inquiry by the commissioners.

county, division of a county, city, borough, university, or place; and upon their finding corrupt practices to have been committed at that election it shall be lawful for them to make the like inquiries concerning the election immediately previous thereto for such county, division of a county, city, borough, university, or place, and so in like manner from election to election, as far back as they may think fit; but where upon inquiry as aforesaid concerning any election such commissioners do not find that corrupt practices have been committed thereat, they shall not inquire concerning any previous election; and such commissioners shall from time to time report to her Majesty the evidence taken by them, and what they find concerning the premises, and especially such commissioners shall report with respect to each election the names of all persons whom they find to have been guilty of corrupt practice at such election, and as well of those who have given bribes for the purchase or for the purpose of purchasing the votes of others as of those who have themselves received money or any other valuable consideration for having given or having refrained from giving, or for the purpose of inducing them to give or to refrain from giving their votes at such election, and also the names of all persons whom they find to have given to others, or to have received themselves, payments by way of head money, or as a reward for giving or refraining from giving their votes at such election, and all other things whereby in the opinion of the said commissioners the truth may be better known touching the premises.

Reports to be
laid before
Parliament.

VII. Every report which such commissioners make to her Majesty in pursuance of this act shall be laid before Parliament within one calendar month next after such report is made, if Parliament be then sitting, or if Parliament be not then sitting, then within one calendar month next after the then next meeting of Parliament.

Power to
send for per-
sons and
papers.

VIII. It shall be lawful for such commissioners, by a summons under their hands and seals, or under the hand and seal of any one of them, to require the attendance before them, at a place and time to be mentioned in the summons, which time shall be a reasonable time from the date of such summons, of any persons whomsoever whose evidence, in the judgment of such commissioners or commissioner, may be material to the subject-matter of the inquiry to be made by such commissioners, and to require all persons to bring before them such books, papers, deeds, and writings as to such commissioners or commissioner

appear necessary for arriving at the truth of the things to be inquired into by them under this act; all which persons shall attend such commissioners, and shall answer all questions put to them by such commissioners touching the matters to be inquired into by them, and shall produce all books, papers, deeds, and writings required of them, and in their custody or under their control, according to the tenor of the summons: Provided always, that no statement made by any person in answer to any question put by such commissioner shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceeding, civil or criminal.

IX. For the more effectually prosecuting any inquiry under this act, every person who has been engaged in any corrupt practice at or connected with any election of members or a member to serve in Parliament for any county, division of a county, city, borough, university, or place to which any inquiry under this act relates, and who is examined as a witness, and gives evidence touching such corrupt practice before the commissioners appointed under this act to make such inquiry, and who upon such examination makes a true discovery to the best of his knowledge touching all things to which he is so examined, shall be freed from all penal actions, forfeitures, punishments, disabilities, and incapacities, and all criminal prosecutions to which he may have been or may become liable or subject at the suit of her Majesty, her heirs or successors, or any other person, for anything done by such person or persons in respect of such corrupt practice; and no person shall be excused from answering any question put to him by such commissioners on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person.

Persons implicated in corrupt practices who may be examined, and shall make a faithful discovery, indemnified.

X. Where any witness is so examined as aforesaid, such witness shall not be indemnified under this act unless he receive from such commissioners a certificate in writing under their hands, stating that such witness has, upon his examination, made a true disclosure touching all things to which he has been so examined; and if any action, information, or indictment be at any time pending in any court against any person so examined as a witness in manner above mentioned, for any corrupt practice at any election to which the inquiry made by such commissioners had reference, such court shall, on the production and proof of such certificate, stay the proceedings in any such action, information, or indictment, and may, in its discretion, award

Witnesses examined not to be indemnified unless they shall have a certificate from the commissioners.

to such person such costs as he may have been put to by such action, information, or indictment.

Commissioners to examine on oath, &c.

XI. It shall be lawful for any such commissioners, or one of them, to administer an oath, or an affirmation where an affirmation would be admitted in a court of justice on the ground of religious scruples, to all persons who are examined before them touching the things to be inquired into by them under this act.

Penalty for non-attendance, or refusing to give evidence.

XII. If any person on whom any summons shall have been served, by the delivery thereof to him or by the leaving thereof at his usual place of abode, fail to appear before the said commissioners at the time and place specified in such summons, it shall be lawful for the said commissioners to certify such default under their hands and seals, or under the hand and seal of any one of them, to any of her Majesty's superior courts in England or Ireland or to the court of session in Scotland, or to the lord ordinary on the bills in the said court, as the case may be; and thereupon such court or judge shall proceed against the person so failing to attend, in the same manner as if the said person had failed to obey any writ of subpoena, or any process issuing out of the said court; and if any person so summoned to attend as aforesaid, and having appeared before the said commissioners, shall refuse to be sworn, or to make answer to such questions as are put to him touching the matters in question by the said commissioners, or to produce and show to the said commissioners any papers, books, deeds, or writings being in his possession or under his control, which the commissioners may deem necessary to be produced; or if any person shall be guilty of any contempt of the said commissioners or their office, the said commissioners shall have such and the same powers to be exercised in the same way as any judge of any of her Majesty's superior courts of England or Ireland, or of the Court of Session in Scotland, sitting under any commission, may now by law exercise in that behalf; and all head-boroughs, gaolers, constables, and bailiffs shall and they are required to give their aid and assistance to the said commissioners in the execution of their office.

Penalty for false swearing, &c.

XIII. Every person who, upon examination upon oath or affirmation before any commissioners to be appointed under this act, wilfully gives false evidence, shall be liable to the pains and penalties of perjury.

Expenses of witnesses.

XIV. The said commissioners shall have power, if they deem fit, to award to any witness summoned to appear before them a reasonable sum for his or her travelling

expenses, and for his or her maintenance according to a scale to be determined and approved of by the commissioners of her Majesty's Treasury, and the said commissioners shall certify to the said commissioners of her Majesty's Treasury the names of the said witnesses, together with the sums allowed to each, and the said commissioners shall pay to the said witnesses the said sums so allowed as aforesaid, out of any money which may be provided by Parliament for the purposes of the said commission.

XV. It shall be lawful for the commissioners of her Majesty's Treasury to make an order for the payment of the necessary expenses of any inquiry under this act; and every commissioner to be appointed under this act shall be paid, at the conclusion of the inquiry, over and above his travelling and other expenses, such sum as the commissioners of her Majesty's Treasury think fit; and any commissioners so appointed shall, after the termination of their last sitting, and after they have made their report to her Majesty, as hereinbefore directed, lay or cause to be laid before the commissioners of her Majesty's Treasury a statement of the number of days they have been actually employed in the inquiry made by them, together with an account of the travelling and other expenses of each of such commissioners; and the commissioners of her Majesty's Treasury shall make an order for the payment to each commissioner of the sum which the commissioners of her Majesty's Treasury so think fit to be paid to him, and in respect of his travelling and other expenses, which said payments shall be made out of any money which may be provided by Parliament for that purpose. Expense of the inquiry.

XVI. That the commissioners shall have such and the like protection and privileges, in case of any action brought against them for any act done or omitted to be done in the execution of their duty, as is now by law given by any act or acts now or hereafter to be in force to justices acting in execution of their office. Protection of commissioners.

XVII. No action shall be brought against any commissioners appointed under this act, or any other person whomsoever, for any thing done in the execution of this act, unless such action be brought within six calendar months next after the doing of such thing. Limitation of actions.

16 & 17 VICT. c. 15.

An Act to limit the Time of taking the Poll in Counties of contested Elections for Knights of the Shire to serve in Parliament in England and Wales to One Day.

[18th March, 1853.]

Whereas it is expedient to restrict the continuance of the polling at every contested election of a knight or knights to serve in Parliament for any county, or for any riding, parts, or division of a county, to one day: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same.

Provisions of
2 & 3 Wm. 4.
c. 45, relating
to duration
of poll re-
pealed.

I. That so much of the act passed in the second year of the reign of his late Majesty King William the Fourth, chapter forty-five, as authorizes the continuance of the polling at every such contested election as aforesaid for two days, and the duties of the sheriff's deputy and poll clerks at such poll during those days, and fixes the commencement and limits the hours of polling on such days, and prevents the commencement of such polling on a Saturday, shall be and the same is hereby repealed.

Regulating
time for poll-
ing at elec-
tions for
knights of
the shire.

II. At every contested election of a knight or knights to serve in any Parliament after the first day of October one thousand eight hundred and fifty-three for any county, or for any riding, parts, or division of a county, the polling shall continue for one day only, and the poll shall commence at eight o'clock in the morning and be kept open until five in the afternoon of such day, and the poll clerks to be employed at the principal place of election and other places shall, at the final close of the day's poll, enclose and seal their several books, and shall publicly deliver them, so enclosed and sealed, to the sheriff, under sheriff, or sheriff's deputy presiding at such poll, and every such deputy who shall have received any such poll books shall forthwith deliver or transmit the same, so enclosed and sealed, to the sheriff or his under sheriff, who shall receive and keep all

the poll books. unopened until the re-assembling of the Court on the day next but one after the close of the poll, unless such next day but one shall be Sunday, and then until the Monday following, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and shall make proclamation of the member or members chosen not later than two o'clock in the afternoon of the said day, any statute to the contrary notwithstanding.

III. The provisions concerning the adjournment of the poll in cases of riot or open violence, and other the provisions of section seventy of the said act of the second year of King William the Fourth, shall be and remain applicable to every such contested election as aforesaid, as if the said section were re-enacted in this act, the words "the day of polling" being substituted therein for the words "one of the two days of polling."

Section 70, of
2 & 3 Wm. 4,
c. 45, to
remain appli-
cable to elec-
tions.

16 & 17 VICT. c. 28.

An Act to amend the Law as to taking the Poll at Elections of Members to serve in Parliament for Scotland.

[14th June, 1853.]

Whereas it is expedient to restrict the continuance of the polling at any contested election for a county to one day, and to provide for the increase or alteration of polling places, and also to repeal so much of the act of the second and third years of the reign of his late Majesty King William the Fourth, chapter sixty-five, as enacts that no poll, whether in counties or burghs, shall begin on a Saturday, and to amend the regulations for taking the poll in counties and burghs: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in the present Parliament assembled, and by the authority of the same,

So much of 2 & 3 Wm. 4. c. 65, as relates to the duration of polls, &c. at elections repealed.

I. That so much of the act passed in the session holden in the second and third years of the reign of his late Majesty King William the Fourth, chapter sixty-five, as enacts that no poll at any election for a county or a burgh shall be directed to begin on a Saturday, or shall be kept open at any election for a county for more than two days, and limits the hours of polling on such days, and so much of the same act as enacts "that every voter shall poll at the polling places of the district within which the premises or any part of them in respect of which he claims to vote may be situate, except only where such polling places shall be in an island distant more than ten miles from the mainland of any county, in which case the voters not resident in such island may poll at the polling place for the district in which the county town is included," and also as enacts "that polling places shall in no case be more in number than fifteen for any one county," shall be and the same is hereby repealed.

The sheriff, with consent of Lord Advocate, may alter polling places, so that not more than 300 electors shall poll at one place.

II. It shall be lawful for each sheriff, with the consent of her Majesty's advocate for Scotland for the time being, from time to time hereafter to increase or otherwise alter the number, situation, or arrangement of the existing polling places and districts, or parts thereof, in his county, so that not more than three hundred electors shall be allowed to poll at any such election as aforesaid at any one place: provided always, that no such increase or alteration as aforesaid shall be made until notice thereof shall have been publicly given by advertisement for six weeks successively in the North British Advertiser and the Edinburgh Gazette, and in the several newspapers published within the county in which the said increase or alteration is proposed to be made; and in case any of the inhabitants, not less than ten in number, being registered voters for such county, shall be desirous of opposing such increase or alteration as aforesaid, it shall be lawful for them, at any time not later than one week from the publication of the last advertisement, to lodge with the sheriff clerk of the county a written notice, signed by such inhabitants as aforesaid, being not less than ten in number, stating their objections to such increase or alteration, or any suggestions they may wish to offer for the purpose of obtaining a different arrangement of polling places or districts from that proposed in such advertisement as aforesaid, and the sheriff clerk shall thereupon transmit the same to her Majesty's advocate for Scotland for the time being, who shall, within fifteen days from the receipt

Notice of objections by ten inhabitant electors.

thereof, notify his decision thereon to the sheriff; and thereupon, if the said decision shall sanction the original or any increase or other alteration in the number, situation, or arrangement of the existing polling places or districts, the sheriff clerk shall forthwith, or, in the event of no such notice of objection as aforesaid being given, shall at the expiration of one week from the date of the last advertisement as aforesaid, make a distinct list of such new polling places and districts so appointed, and shall cause copies of the said lists to be affixed to the doors of all the parish churches in his county.

III. Provided always, that in case any of the inhabitants of a county, being registered voters for the same, shall be at any time dissatisfied with the then existing number or position of polling places or districts, it shall be lawful for any of them to present to the sheriff a petition signed by not less than ten such inhabitants as aforesaid, representing that the number of polling places or districts is insufficient or excessive (as the case may be), or that their situation and arrangement is inconvenient, and praying that the place or places mentioned in such petition may be a polling place or places for that county, or that the alterations or other changes mentioned in such petition may be made in the number, situation or arrangement of the then existing polling places or districts; and on the receipt of such petition the sheriff shall, with the consent of her Majesty's advocate for Scotland, proceed therein in the same way as hereinbefore provided, and as though the increase or alterations in the said petition mentioned had been originally proposed by the sheriff.

Inhabitant electors, being not less than ten, may petition for increase or other alteration of polling places.

IV. At any contested election the sheriff shall, if required by any of the candidates, on or before the day of nomination, direct two or more booths, compartments, halls, rooms, or other places for polling, to be provided at each polling place: provided always, that no poll at any such election shall be taken at any inn, hotel, tavern, public house, or other premises licensed for the sale of beer, wine, or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates, expressed in writing.

Sheriff, if required, to provide more booths.

No poll to be taken at inns, &c. except by consent.

V. That every county voter (except as hereinafter provided) shall poll at the polling place of the district within which the premises, or any part of them, in respect of which he claims to vote, may be situate; provided that nothing herein contained shall be held to repeal or alter the

Where voters shall poll.

ninth section of the seventy-eighth chapter of the statute passed in the fifth and sixth years of his said Majesty, respecting freeholders in counties.

Voters may claim to vote in another district in certain cases.

VI. Any county voter, not being a freeholder, and not resident in the district containing the premises in respect of which he claims to vote, may make application, in person or by writing, to the sheriff, at the registration court of the county, to be entitled to poll at the polling place nearest to his residence; and the sheriff, on being satisfied of the truth of the statements of such voter, shall insert in the list against the name of the voter making such application the name of the polling place at which such person shall be registered to vote; and such voter shall thereafter be entitled to vote at such polling place, and shall not be at liberty to poll at any other polling place for the same county.

Provision for non-resident voters, with island qualifications.

VII. Where the polling place for a district containing the premises in respect of which any voter claims to vote shall be in an island distant more than ten miles from the mainland of the county, such voter, not being resident in the island, may poll at the polling place for the district in which the county town is included.

Declaration of the poll in certain cases.

VIII. With respect to section thirty-three of the said first-mentioned statute, be it enacted, that where the sheriff shall not have received the poll books transmitted from any island within the time therein limited for the opening thereof, the sheriff may adjourn the court for the declaration of the state and result of the poll from day to day, omitting Sunday, and shall either at the first of such adjourned courts after the receipt of such poll books, or at the expiration of twelve days from the first court so adjourned (whichever shall happen first) proceed to declare the poll, and make proclamation and a return in the manner therein mentioned.

Poll to be kept open only one day.

IX. No poll at any election for any county shall be kept open for more than one day, and that only between the hours of eight in the morning and four in the afternoon: provided always, that at any time after a poll has been demanded the poll at any one place may be closed, if all the candidates or their agents and the sheriff or his substitute shall agree in so closing it: provided also, that when the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whether such proceedings shall consist of the nomination of candidates, or of the taking the poll, the sheriff or his substitute at the place where the riot or open violence has occurred may adjourn

Order and manner of polling.

the nomination or the taking the poll at the particular polling place or places at which such riot or open violence shall have happened to the following day or some other convenient time, and if necessary may repeat such adjournment till such interruption or obstruction shall have ceased, he always giving notice to the sheriff or his substitute who is to make the return of such adjournment having been made; and the state of the poll shall not be finally declared, nor the result of the election proclaimed, until the poll so interrupted or obstructed shall be closed and transmitted to the sheriff or his substitute who is to make the return.

X. That in respect of the remote situation of certain parts of the county of Orkney and Shetland, and the occasional difficult intercommunication therein, nothing in this act contained shall alter the provisions of the said recited act so far as relates to the keeping open of the poll for two consecutive days as heretofore; but nothing herein contained shall be construed to exclude the said county of Orkney and Shetland from any of the benefits or obligations of the other portions of this act.

Poll to be kept open two days in Orkney and Shetland.

XI. The word "burgh" in this act shall include every city, burgh, town, or district of cities, burghs, or towns, entitled to return or to contribute to return a member to Parliament.

Meaning of "burgh."

An Act to limit the Time for proceeding to Election in Counties and Boroughs in England and Wales, and for Polling at Elections for the Universities of Oxford and Cambridge, and for other Purposes.

[15th August, 1853.]

Whereas it is expedient to alter the law respecting the direction and return of writs for the election of members of Parliament in certain cases: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice

and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that—

Sheriffs to make election for their counties only.

Writs for election in Universities of Oxford and Cambridge, &c. to be directed to the returning officers thereof.

Writs, &c. to be made conformable to this act.

Elections in counties to be not later than the twelfth nor sooner than the sixth day after the sheriff's proclamation.

I. The writ for any election hereafter to be directed to the sheriff of any county in England or Wales (other than the county of a city or of a town) shall require such sheriff to cause election to be made of a knight or knights to serve in Parliament for such county, and for any riding, parts, or division thereof only, and not further or otherwise; the writ for making any election of a member or members to serve in Parliament for the Universities of Oxford and Cambridge, and for every borough, town corporate, port, or place returning members to serve in Parliament in England and Wales, shall hereafter be directed to the vice chancellors of the said Universities, and to the returning officers of such boroughs, towns corporate, ports, and places respectively, and such vice chancellors and returning officers shall thereupon in due course of law proceed to election, and after such election certify the same, together with the writ, according to the directions thereof; all such writs hereafter to be issued, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs, shall be and the same are hereby authorized to be framed and expressed in such manner and form as may be necessary for carrying the provisions of this act into effect.

II. Whereas by the fourth section of the act of the twenty-fifth George the Third, chapter eighty-four, it is provided, that immediately after the receipt of the writ for making any election of a knight or knights to serve in Parliament for any county or shire in England or Wales, and endorsing on the back thereof the day of receiving the same, as by law required, it should and might be lawful for the sheriff of such county and he is thereby required, within two days after the receipt thereof, to cause proclamation to be made at the place where the ensuing election ought by law to be holden of a special county court to be there holden for the purpose of such election only on any day (Sunday excepted) not later from the day of making such proclamation than the sixteenth day nor sooner than the tenth day: and whereas it is expedient to limit the time for proceeding to such elections: be it therefore enacted, that hereafter any such special county court for the purpose of the election of a knight or knights to serve in Parliament for any county, riding, parts, or division of any county in England or Wales shall be holden on any day (Sunday,

Good Friday, and Christmas day excepted) not later from the day of making such proclamation than the twelfth day nor sooner than the sixth day : provided that this section, shall not apply to the election for any county of a city or of a town.

III. That the act of the third and fourth Victoria, chapter eighty-one, be and the same is hereby repealed, and in every city or town being a county of itself, and in every borough, town corporate, port, or place, returning or contributing to return a member or members to serve in Parliament in England and Wales, the officer to whom the duty of giving notice for the election of such member or members belongs shall proceed to election within six days after the receipt of the writ or precept, giving three clear days notice at least of the day of election, exclusive of the day of proclamation and the day of election.

Elections in cities, &c. to be within six days after receipt of writ, three days notice being given.

IV. At any election of a member or members to serve in Parliament for either of the Universities of Oxford and Cambridge the polling shall not continue for more than five days at the most, Sunday, Christmas day, Good Friday, and Ascension day being excluded.

Polling at the Universities to continue five days only.

V. At every such election the vice chancellor shall have power to appoint any number of polling places not exceeding three, in addition to the House of Convocation or Senate House, and to direct at which of such polling places the members of convocation and of the senate according to their colleges shall vote, and also to appoint any number of pro vice chancellors, any one of whom may receive the votes and decide upon all questions during the absence of such vice chancellor; and such vice chancellor shall have power to appoint any number of poll clerks and other officers, by one or more of whom the votes shall be entered in such number of poll books as shall be judged necessary by such vice chancellor.

Vice Chancellors to appoint additional polling places, and appoint pro vice chancellors, &c. for conducting the poll.

VI. No poll at any election for members of Parliament in England and Wales shall be taken at any inn, hotel, tavern, public house, or other premises licensed for the sale of beer, wine, or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing.

Polls not to be taken at inns, &c. without consent of all the candidates.

VII. It shall be lawful for her Majesty, by and with the advice of her privy council from time to time hereafter, on petition from the justices in quarter sessions assembled of any county, riding, parts, or division of any county, other than any county of a city or of a town, in England and

Power for her Majesty, on petition of justices, to direct that polling place in counties

shall cease
to be such,
and that
other places
be substi-
tuted in lieu
thereof.

Wales, representing that it would be expedient that any polling place or places mentioned in the said petition should cease to be such, and that any other place or places mentioned in the said petition should be substituted in lieu thereof, and praying that such alteration and substitution might be made, to declare that the said alteration and substitution shall be made in respect of all or any of the places mentioned in the said petition; and the said declaration shall be certified under the hand of one of the clerks in ordinary of her Majesty's Privy Council, and when so certified shall be published in the *London Gazette*, and shall then be of the same force and effect as if the same had been expressly made by the authority of Parliament.

Proceedings
upon the
said petition
to be as pro-
vided by s. 2,
of 6 & 7 Wm.
4. c. 102.

VIII. Provided always, that the notice of and proceedings to be had upon any such petition shall be according to the provisions of the second section of the one hundred and second chapter of the statute of the sixth and seventh years of King William the Fourth in respect of the petition therein mentioned.

17 & 18 VICT. c. 102.

An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament.
[10th August, 1854.]

Whereas the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient: and whereas it is expedient to consolidate and amend such laws, and to make further provision for securing the freedom of such elections: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repeal of
acts in the
schedule.

I. The several acts of Parliament mentioned in the schedule (A) hereto annexed shall be repealed to the extent specified concerning the same acts respectively in the third column of the said schedule.

II. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly: Bribery defined.

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election :
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election :
3. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election :
4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :
5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election :

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of one hundred pounds to any person who shall sue for the

same, together with full costs of suit : provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined.

III. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election :
2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election :

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of ten pounds to any person who shall sue for the same, together with full costs of suit.

Penalty.

Treating defined.

IV. Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time, either before, during, or after any election, directly or indirectly give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit ; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect.

Penalty.

V. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit. Undue influence defined.
Penalty.

VI. Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled "The List of Persons disqualified for Bribery, Treating, or undue Influence," which last mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published. Names of offenders to be struck out of register, and inserted in separate list.

VII. No candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and No cockades, &c. to be given at elections.

Penalty. every person so giving or providing shall for every such offence forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music or flags or banners, shall be deemed illegal payments within this act.

Voters not to serve as special constables during elections. VIII. No person having a right to vote at the election for any county, city, borough, or other place shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act; and he shall not be liable to any fine, penalty, or punishment whatever for refusing so to act, any statute, law, or usage to the contrary notwithstanding.

Penalties, how to be recovered. IX. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence respectively shall be recoverable by action or suit by any person who shall sue for the same in any of her Majesty's Superior Courts at Westminster, if the offence be committed in England or Wales, and in any of her Majesty's Superior Courts in Dublin, if the offence be committed in Ireland, and in or before the court of session if the offence be committed in Scotland, and not otherwise.

Costs and expenses of prosecutions. X. It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: provided always, that no indictment for bribery or undue influence shall be triable before any court of quarter sessions.

Returning officer to give notice of election. XI. For the more effectual observance of this act, every returning officer to whom the execution of any writ or precept for electing any member or members to serve in Parliament may appertain or belong shall, in lieu of the proclamation or notice of election heretofore used, publish or cause to be published such proclamation or notice of election as is mentioned in schedule (B) to this act, or to the like effect.

In cases of private prosecutions, if judgment be given for the XII. In case of any indictment or information by a private prosecutor for any offence against the provisions of this act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained

by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.

defendant, he shall recover costs from the prosecutor.

XIII. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs.

XIV. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

Limitation of actions.

XV. Whereas it is expedient to make further provision for preventing the offences of bribery, treating, and undue influence, and also for diminishing the expenses of elections: be it enacted, that within six days after the passing of this act the returning officers of the city of Canterbury, the boroughs of Cambridge, Kingston-upon-Hull, Maldon, and Barnstaple, and once in every year, in the month of August, the returning officer of every county, city, and borough shall appoint a fit and proper person to be an election officer, to be called "Election Auditor or Auditor of Election Expenses," to act at any election or elections for and during the year then next ensuing, and until another appointment of election auditor shall be made; and such returning officer shall, in such way as he shall think best, give public notice of such appointment in such county, city, or borough; provided, that any person appointed an election auditor may be re-appointed as often as the returning officer for the time being shall

Power to returning officers to appoint election auditors.

think fit; and that every person who shall be an election auditor on the day appointed for any election shall continue to be the election auditor in respect of such election until the whole business of such election shall be concluded, notwithstanding the subsequent appointment of any other person as election auditor; and every election auditor upon his appointment shall make and sign before the returning officer the following declaration:

I [A.B.] do solemnly and sincerely promise and declare, that I will well and truly and faithfully, to the best of my ability in all things, perform my duty as election auditor, according to the provisions of "The Corrupt Practices Prevention Act, 1854."

And every election auditor wilfully doing any act whatever contrary to the true intent and meaning of such declaration shall be deemed guilty of a misdemeanor, and in Scotland of an offence punishable with fine and imprisonment.

Bills, &c. to be sent in within one month to candidate or right to recover barred.

XVI. All persons, as well agents as others, who shall have any bills, charges, or claims upon any candidate for or in respect of any election shall send in such bills, charges, or claims within one month from the day of the declaration of the election to such candidate, or to some authorized agent of such candidate acting on his behalf, otherwise such persons shall be barred of their right to recover such claims, and every or any part thereof: provided always, that in case of the death within the said month of any person claiming the amount of such bill, charge, or claim, the legal representative of such person shall send in such bill, charge, or claim within one month after obtaining probate or letters of administration, or confirmation as executor, as the case may be, or the right to recover such claim shall be barred as aforesaid.

Bills, &c. received within one month to be sent in to election auditor.

XVII. Every candidate shall, by himself or his agent in that behalf, within three months after the day of the declaration of the election, or within two months after any bill, charge, or claim has been sent in by the legal representative of any deceased creditor, as hereinbefore provided, send in to the election auditor for payment all such bills, charges, or claims (except as hereinafter excepted) as have been sent in to such candidate within the one month hereinbefore specified from the day of the declaration of the election, or after the granting of probate, or letters of administration, or confirmation as executor, as the case may be: provided always, that the candidate shall, by himself or his agent as aforesaid, at the time of his sending in any such bill, charge,

or claim, state to the election auditor whether he admits the whole amount of such bill, charge, or claim, or if not the whole then how much thereof, if any, he admits to be correct: provided also, that in case of the wilful default of the candidate, by himself or his agent as aforesaid, in sending in all such bills, charges, or claims, or in making such statement at the time of sending in such bills, charges, or claims, he shall be liable to a penalty of twenty pounds, and to a further penalty of ten pounds for every subsequent week of wilful default or neglect in sending in all such bills, charges, or claims, or in making such statement, to be recovered by any person who will sue for the same, together with full costs of suit: provided always, that in case any such candidate shall be absent from the United Kingdom at the time of such election, he shall send in to the election auditor for payment any such bills, charges, or claims as aforesaid within one month after his return to the United Kingdom, which shall be of the same force and effect as if the same had been sent in as herein provided.

XVIII. No payment of any bill, charge, or claim, or of any money whatever, for or in respect of any election, or the expenses thereof, (except as herein excepted), shall be made by or by the authority of any candidate, except by or through such election auditor, and any payment made by or by the authority of any candidate otherwise than as herein provided shall be deemed and taken to be an illegal payment, and upon proof thereof such candidate shall forfeit the sum of ten pounds, with double the amount of such illegal payment, and full costs of suit, to any person who will sue for the same: provided always, that it shall be lawful for any candidate, by himself or his agent, to name any banker through whom alone such bills, charges, or claims, or money as aforesaid, shall be paid by the election auditor, and in that case the election auditor shall pay such bills, charges, and claims by cheques drawn on such banker, to be countersigned by the candidate, or some person on his behalf specially appointed for that purpose.

No payments to be made except through election auditor.

XIX. If the election auditor, by the authority of any candidate, tenders or offers to pay any sum in respect of any bill, charge, or claim sent in as hereinbefore provided, such tender shall be taken for all purposes to be the tender of such candidate, and may, in any action or other proceeding brought against such candidate to recover the amount of such bill, charge, or claim, be pleaded as such, or otherwise be made available according to the proceedings of the Court

Tender and payment into Court by election auditor.

in which such action or other proceeding is brought or carried on; and if such plea is pleaded, or if it shall be deemed advisable for any other reason to pay money into court in any action or other proceeding brought against a candidate in respect of any liability alleged to have been incurred by him at such election, the election auditor may, at the request of the candidate, and by leave of any one of the judges of the Superior Courts of Common Law at Westminster, or of any one of the judges of her Majesty's Superior Courts at Dublin, or of any one of the judges of the Court of Session in Scotland, as the case may be, pay into Court the sum required; and such payment into court by the election auditor shall, for the purposes of such action, be deemed and taken to be and may be pleaded as payment into court by the candidate himself: provided always, that on any issue or hearing in reference to any such tender or payment of money into court, it shall not be necessary to prove the appointment of the election auditor.

Copy of judgment and statement of payments made in satisfaction to be sent to auditor.

XX. Nothing in this act contained (except as herein specially provided) shall be taken to limit the right of any creditor to bring any action or otherwise to proceed against a candidate for or in respect of any expenses connected with the election; and if in any such action or proceeding final judgment be obtained against the candidate, such candidate shall forthwith send to the election auditor a copy or certificate of such judgment; and when and as the monies recovered by the said judgments, or any part thereof, shall be paid or satisfied by such candidate, or shall be obtained under or by virtue of any execution, the said candidate shall thereupon forward to the election auditor a statement of the monies so paid or obtained in respect of such judgment.

Consent of auditor necessary before settling action.

XXI. No candidate shall be allowed to compound or settle any action or other proceeding brought against him in respect of any expenses alleged to have been incurred by him in or about the election, or to confess judgment in such action or proceeding, without the consent of the election auditor.

Candidate to pay personal expenses and expenses of advertising.

XXII. The personal expenses of any candidate, and the expenses of advertising in newspapers with reference to any election, shall be defrayed by the candidate himself, or by his authority, but a full and true account of the sums so paid in respect of the said advertisements shall, as soon as conveniently may be, be made out to the best of his ability, and rendered to such election auditor, by such candidate, and the amount of such account shall be included in the

general account of the expenses incurred at any election to be made out and kept by such election auditor as hereinafter provided.

XXIII. And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence, to any person who shall sue for the same, together with full costs of suit.

Refreshments to voters on the days of nomination or polling declared illegal.

XXIV. No person shall pay or agree to pay any expenses of any election, or any sum of money whatever, in order or with a view to procure or promote the election of any person to serve in Parliament, save to the candidate at such election, or to or under the authority of the election auditor, other than as excepted and allowed by this act: and every person who shall pay or agree to pay any such expenses or money as aforesaid, save as aforesaid, shall become liable to a penalty of fifty pounds, and of double the money so paid or agreed to be paid, to be recovered in an action of debt by any one who shall sue for the same: provided, that if upon the trial of any action to recover any such penalty or penalties it shall appear to the judge who shall try the same that any such payment shall have been made or agreed to be made without any corrupt or improper intention, such judge may, if he shall think fit, reduce such penalty or penalties to any sum not less than forty shillings, and may also, if he shall think fit, direct that the plaintiff shall not be entitled to costs of such action: provided also, that no expenses of or relating to the registration of electors, and no subscriptions or contributions *bonâ fide* made to or for any public or charitable purpose, shall be deemed election expenses within the meaning of this act: provided also, that in any action to recover any penalty under this act it shall be lawful to the court in which such action shall be brought, or any judge thereof, if they or he shall think fit, to order that the plaintiff in such action shall give security for costs, or that all proceedings therein shall be stayed.

No person to pay expenses of elections, except to candidate or election auditor.

XXV. Any candidate, and his agents by him appointed

Candidates and agents may make payments before day of election.

in writing, according to the provisions of this act, may, at any time before the day of nomination, pay any lawful and reasonable expenses in respect of the election which he or they shall *bonâ fide* believe fit and proper to be paid, in ready money, and the payment of which cannot conveniently be postponed; provided, that the candidate and his agents shall, upon or before the day of nomination make out to the best of his ability, and deliver to the election auditor, a full, true, and particular account of all such payments, with the names of the persons to whom they have been made, signed by such candidate or his agents respectively, and no payment so made shall be a legal payment within this act unless such account thereof shall be duly rendered to the election auditor.

Account of election expenses to be made out by election auditor.

XXVI. The election auditor shall, as soon as he conveniently can make out a full and true account of all the expenses incurred at the election, specifying therein every sum of money paid to him or paid by him or by his authority on behalf of each candidate, and of all sums claimed, although the same shall not have been allowed or paid, and every sum which has been paid into court as aforesaid or recovered by judgment against such candidate, and to whom, by name, such payment was made, and for what particular debt or liability; and the election auditor shall include in such general account the amount of the sums paid by each candidate for advertisements, and he shall specify therein the total amount of expenses incurred by each candidate; and the account, when so made out, shall be duly signed by him: provided always, that, if it shall be found necessary, the election auditor may from time to time make out a supplementary account or accounts, which shall be made and abstracted in the manner herein provided with reference to the first general account.

Election auditor to keep accounts in some convenient place which shall be open to inspection.

XXVII. The election auditor shall keep all accounts which shall come to his hands in some fit and convenient place, and shall, at all reasonable and convenient times, submit the same to the inspection of the candidates and their agents, and permit them to take copies of the same or of any part thereof, upon request, and when such general account as aforesaid shall be so made out and signed by him, he shall keep the same in some fit and convenient place; and such general accounts shall be open to the inspection of any person, and copies thereof or of any part thereof shall be furnished to any person at all reasonable and convenient times, upon request, such person paying a fee, at the rate of

one shilling for every two hundred words, to a copying clerk, for the same; and when the election auditor shall have concluded the business of any election he shall deliver over all accounts in his hands to the clerk of the peace in counties, and to the town clerk or other officer performing any of the duties of town clerk in cities and boroughs, and to the sheriff clerk in counties in Scotland, who shall allow them to be inspected by any person, on the payment of one shilling, and shall furnish copies of the same or of any part thereof on the payment of a fee, at the rate of one shilling for every two hundred words, to the copying clerk, provided always, that for any copy so furnished the fee shall in no instance be less than one shilling, and shall deliver over to the candidates respectively the balance of all monies, if any, and all vouchers in his hands, except any vouchers appertaining personally to himself.

XXVIII. The election auditor shall also, as soon as he conveniently can, insert or cause to be inserted an abstract of such account, signed by him, in some newspaper published or circulating in the county or place where such election is held; and such abstract of account shall specify the amount of each of such bills, charges, or claims admitted to be correct, or claimed and objected to, and the names of the parties to whom the same shall have been paid or are due, or by whom the same have been claimed respectively.

Election auditor to publish abstract of such accounts.

XXIX. In case the person appointed to act as election auditor should, before his duties herein mentioned are completed, die, resign, or become incapable of acting as such election auditor, it shall be lawful for the returning officer for the time being to appoint some fit and proper person to act as such election auditor in the room of the person originally appointed as aforesaid for the remainder of the then current year of such appointment; and the returning officer shall give public notice of such appointment in the county, city, or borough.

Returning officer to appoint new election auditor in case of death, &c.

XXX. All monies, bills, papers, and documents of and relating to the election which were in the hands or under the control of the election auditor going out of office, dying, resigning, or becoming incapable of acting as aforesaid, except receipts or vouchers for payments actually made by such election auditor, shall be handed over and transferred to the new election auditor appointed as hereinbefore mentioned; and such new election auditor shall in all respects, or as near thereto as may be, have the same powers and act in the same way as if he had been originally appointed pre-

Monies, &c. to be handed over to new election auditor.

vious to the election: provided always, that it shall be lawful for such new election auditor, at all reasonable times, to have access to and take copies of or extracts from the receipts or vouchers above excepted.

Appointment
and notifi-
cation of
agents.

XXXI. Every candidate shall, before or at the nomination, or as soon after as conveniently may be, declare to the election auditor in writing the name or names of his agent or agents for election expenses, who shall be appointed in writing, and that he has not appointed and will not appoint any other agent without in like manner declaring the same to the election auditor, and no other than such agents shall have authority to expend any money or incur any expenses of or relating to the election, in the name or on the behalf of the candidate: and such agents may pay any of the current expenses of the election necessary to be paid in ready money, provided that such agents shall make out, to the best of their ability, and render, from time to time, true and particular accounts to the election auditor of all such payments; and every such agent shall, as soon as conveniently may be after his appointment as aforesaid, make and sign the following declaration:

I [A.B.], being appointed an agent for election expenses by [X.Y.], a candidate at this election, do hereby solemnly and sincerely declare, that I have not knowingly made, authorized, or sanctioned, and that I will not knowingly make, authorize, or sanction, any payment on account of this election, otherwise than through the election auditor, save as excepted and allowed by "The Corrupt Practices Prevention Act, 1854."

Nomination
of absent
candidates
expenses.

XXXII. In case any person shall be proposed and seconded at any election in his absence, and without his previous authority, it shall be lawful to the persons proposing and seconding such person to pay and agree to pay the lawful expenses of the election of such person; and such proposer and seconder having agreed to pay such lawful expenses shall become liable to pay the fees hereby made payable to the election auditor, and pay any of the lawful expenses of such election, in like manner and upon the same terms and conditions as herein provided concerning agents for election expenses appointed in writing by the candidates.

Payments
before pass-
ing of act.

XXXIII. If any candidate at any election, or any member hereafter returned to serve in Parliament, shall before the passing of this act have paid any money for or in respect of any election hereafter to be held, or any expenses thereof,

such person shall, to the best of his ability, deliver a full, true, and particular account of such payment or payments to the election auditor.

XXXIV. Every such election auditor shall be paid and be entitled to receive, by way of remuneration to him for his services in and about the election, the sum of ten pounds from each candidate at the election, as and by way of first fee; and a further commission, at the rate of two pounds per centum, from each candidate upon every payment made by him for or in respect of any bill, charge, or claim sent in to such election auditor as hereinbefore provided; and the reasonable expenses incurred by the election auditor in the business of the election and the performance of his duties pursuant to this act shall form part of the election expenses, and shall be paid rateably and proportionably by the candidates respectively.

Election auditor, how paid.

XXXV. On the trial of any action for recovery of any pecuniary penalty under this act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable to give evidence in actions and suits under the act of the fourteenth and fifteenth Victoria, chapter ninety-nine, and "The Evidence Amendment Act, 1853," but subject to and with the exceptions contained in such several acts: provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this act against the party giving it.

In actions for penalties parties, &c. to be competent witnesses.

XXXVI. If any candidate at an election for any county, city, or borough shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence.

Candidate declared guilty of bribery incapable of being elected during Parliament then in existence.

XXXVII. In citing this act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

Short title.

XXXVIII. Throughout this act, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county, stewardry, or combined counties respectively returning a member or members to serve in Parliament; and

Interpretation of terms.

the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as hereinbefore defined) returning a member or members to serve in Parliament; and the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman presiding in any court held for the revision of the lists of voters, or his deputy in Ireland, and a sheriff or sheriff's Court of Appeal in Scotland, and every other person whose duty it may be to hold a court for the revision and correction of the lists or registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament; and the words "candidate at an election" shall include all persons elected as members to serve in Parliament at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election; and the words "personal expenses," as used herein with respect to the expenditure of any candidate in relation to any election, shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.

Duration
of act.

XXXIX. This act shall continue in force for one year next after the passing thereof, and thenceforth to the end of the then next session of Parliament.

The SCHEDULE (A) above referred to.

Date of Act.	Title of Act.	Extent of Repeal.
7 Wm. 3, c. 4, A.D. 1695.	An act for preventing charge and expense in elections of members to serve in Parliament.	The whole act.
2 Geo. 2, c. 24, A.D. 1729.	An act for the more effectual preventing bribery and corruption in the election of members to serve in Parliament.	All the act, except the 3rd section, prescribing the oath to be taken by returning officers, and except so far as the penalties and provisions of the said act are applicable to the false taking of such oath, and the neglect to take the same.
16 Geo. 2, c. 11.	An act to explain and amend the laws touching the elections of members to serve for the Commons in Parliament for that part of Great Britain called Scotland, and to restrain the partiality and regulate the conduct of returning officers at such elections.	So much of the act as is contained in the 33rd section.
43 Geo. 3, c. 74, A.D. 1803.	An act for further regulating the administration of the oath or affirmation required to be taken by electors of members to serve in Parliament by an act passed in the second year of King George the Second, intituled "An Act for the more effectual preventing Bribery and Corruption in the Election of Members to serve in Parliament."	The whole act.

Date of Act.	Title of Act.	Extent of Repeal.
49 Geo. 3, c. 118, A.D. 1809.	An act for better securing the independence and purity of Parliament, by preventing the procuring or obtaining of seats in Parliament by corrupt practices.	The whole act.
4 Geo. 4, c. 55, A.D. 1823.	An act to consolidate and amend the several acts now in force, so far as the same relate to the election and return of members to serve in Parliament for counties of cities and counties of towns in Ireland.	So much of the act as is contained in the 48th, 79th, and 81st sections.
7 & 8 Geo. 4, c. 37, A.D. 1827.	An act to make further regulations for preventing corrupt practices at elections of members to serve in Parliament, and for diminishing the expense of such elections.	The whole act.
2 & 3 Wm. 4, c. 65, A.D. 1832.	An act to amend the representation of the people of Scotland.	So much of the 26th section of the act and the schedule (K.) thereto annexed as relates to the oath or affirmation against bribery to be put to any registered voter at any poll or election.
2 & 3 Wm. 4, c. 88, A.D. 1832.	An act to amend the representation of the people of Ireland.	So much of the 54th section of the act as relates to administering the oath or affirmation against bribery.
5 & 6 Vict. c. 102.	An act for the better discovery and prevention of bribery and treating at the election of members of Parliament.	So much of the act as is contained in the 20th and 22nd sections.

SCHEDULE (B).

No. 1.—*Proclamation to be used in Counties.*

Election of Knight, &c.

The sheriff of the county of _____ will, at _____ the
 day of _____ now next ensuing, proceed to the
 election of a knight or knights, member or members [*as the
 case may be*] for the county or division of a county [*as the
 case may be*], at which time and place all persons entitled to
 vote at the said election are requested to give their
 attendance.

And take notice, that all persons who are guilty of bri-
 bery at the said election will, on conviction of such offence,
 be liable to the penalties mentioned in that behalf in "The
 Corrupt Practices Act, 1854."

And take notice, that all persons who are guilty of treat-
 ing or undue influence at the said election will, on convic-
 tion of such offence, be liable to the penalties mentioned in
 that behalf in "The Corrupt Practices Prevention Act,
 1854."

Signature of the proper officer.

No. 2.—*Notice of Election in Boroughs.*

City or borough of _____ day of _____

In pursuance of a writ received by me _____ for
 electing a burgess or burgesses [*as the case may be*], to serve
 in Parliament for the city or borough [*as the case may be*],
 I do hereby give notice, that I shall proceed to election
 accordingly on the _____ day of _____ at _____ o'clock
 in _____, when and where all persons concerned are
 to give their attendance.

And take notice, that all persons who are guilty of bri-
 bery at the said election will, on conviction of such offence,
 be liable to the penalties mentioned in that behalf in "The
 Corrupt Practices Prevention Act, 1854."

And take notice, that all persons who are guilty of treat-
 ing or undue influence at the said election will, on convic-
 tion of such offence, be liable to the penalties mentioned in
 that behalf in "The Corrupt Practices Prevention Act,
 1854."

Signature of the proper officer.

17 & 18 VICT. c. 57.

An Act to amend the Law relating to the appointment of returning officers in certain cases. [31st July, 1854.]

Whereas by an act passed in the session of Parliament holden in the sixteenth and seventeenth years of the reign of her present Majesty, chapter sixty-eight, it is amongst other things enacted, that the writ for making any election of a member to serve in Parliament for any borough, town corporate, port, or place returning members to serve in Parliament in England and Wales, shall thereafter be directed to the returning officer of such borough, town corporate, port, or place respectively: And whereas by another act passed in the session of Parliament holden in the sixth and seventh years of his late Majesty, chapter one hundred and one, it was amongst other things enacted, that if at any time during which any precept ought to be issued, or other act done by or with regard to the returning officer for any city, borough, or town, the office of returning officer shall happen to be vacant, it shall be lawful for the sheriff of the county in which such city, borough, or town is situate, by writing under his hand, to appoint some fit person as his deputy to perform the duties of returning officer during such vacancy: And whereas difficulties and delay may arise in the appointment of such sufficient deputy, in the case of a vacancy in the office of returning officer, by reason of the writ being directed to such returning officer, and there being no person qualified to receive and execute the same: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sheriff to be returning officer in boroughs where the office of returning

I. Every writ for making any election of a member to serve in Parliament for any borough, city, or town, shall be directed to the returning officer of the said borough, or his deputy, and in their absence to the sheriff of the county in which the said city, borough or town is situate; and in all

cases whatever, whenever there shall be, either from temporary vacancy or from some other cause, no person duly qualified in any borough, city, or town to perform the duties of a returning officer for the same, the sheriff of the county in which such borough, city or town is situate shall be charged with the execution of the said writ, and shall execute the same and in all respects perform the duties of and incidental to the office of returning officer: Provided always, that it shall not be lawful for the said sheriff to receive or execute the writ except when there shall be no person within the said borough, city, or town legally qualified and competent as a returning officer to execute the same.

officer shall
be vacant.

17 & 18 Vict. c. 125.

An Act for the further Amendment of the Process, Practice, and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham. [12th August, 1854.]

XIX. It shall be lawful for the Court or Judge, at the trial of any cause, where they or he may deem it right for the purposes of justice, to order an adjournment for such time, and subject to such terms and conditions as to costs, and otherwise, as they or he may think fit.

Power to
adjourn trial.

XX. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or judge or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following; viz.

Affirmation
instead of
oath in cer-
tain cases.

"I A. B. do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare," &c.
which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

Persons making a false affirmation, be subject to the same punishment as for perjury.

How far a party may discredit his own witnesses.

Proof of contradictory statements of adverse witnesses.

Cross-examination as to previous statements in writing.

Proof of previous conviction of a witness may be given.

XXI. If any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing, which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes of this kingdom are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

XXII. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony: but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

XXIII. If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

XXIV. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the cause without such writing being shown to him; but if it is intended to contradict such witness by the writing, his intention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

XXV. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and, upon being so questioned, if he either denies the fact, or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the

substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer, (for which certificate a fee of five shillings and no more shall be demanded or taken,) shall upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

XXVI. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto.

Attesting witness need not be called, except in certain cases.

XXVII. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

Comparison of disputed writing.

XXVIII. Upon the production of any document as evidence at the trial of any cause, it shall be the duty of the officer of the court whose duty it is to read such document to call the attention of the Judge to any omission or insufficiency of the stamp; and the document, if unstamped, or not sufficiently stamped, shall not be received in evidence until the whole or (as the case may be) the deficiency of the stamp duty, and the penalty required by statute, together with the additional penalty of one pound, shall have been paid.

Provision for stamping documents at the trial.

XXIX. Such officer of the court shall, upon payment to him of the whole or (as the case may be) of the deficiency of the stamp duty payable upon or in respect of such document, and of the penalty required by statute, and of the additional penalty of one pound, give a receipt for the amount of the duty or deficiency which the judge shall determine to be payable, and also of the penalty, and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall, at the end of each sittings or assizes (as the case may be), duly make a return to the Commissioners of the Inland Revenue of the monies, if any, which he has so received by

Officer of the court to receive the duty and penalty.

13 & 14 Vict.
c. 97.

way of duty or penalty, distinguishing between such monies, and stating the name of the cause and of the parties from whom he received such monies, and the date, if any, and description of the document for the purpose of identifying the same; and he shall pay over the said monies to the Receiver General of the Inland Revenue, or to such person as the said commissioners shall appoint or authorize to receive the same; and in case such officer shall neglect or refuse to furnish such account, or to pay over any of the monies so received by him as aforesaid, he shall be liable to be proceeded against in the manner directed by the eighth section of an Act passed in the session of Parliament holden in the thirteenth and fourteenth years of the reign of her present Majesty, intituled "An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, and to amend the Laws relating to the Stamp Duties;" and the said commissioners shall, upon request, and production of the receipt hereinbefore mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid: Provided always, that the aforesaid enactment shall not extend to any document which cannot now be stamped after the execution thereof on payment of the duty and a penalty.

No document
under this
act to require
a stamp.

No new trial
for ruling as
to stamp.

Error may
be brought
on a special
case.

XXX. No document made or required under the provisions of this Act shall be liable to any stamp duty.

XXXI. No new trial shall be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

XXXII. Error may be brought upon a judgment upon a special case in the same manner as upon a judgment upon a special verdict, unless the parties agree to the contrary: and the proceedings for bringing a special case before the court of error shall, as nearly as may be, be the same as in the case of a special verdict; and the court of error shall either affirm the judgment or give the same judgment as ought to have been given in the court in which it was originally decided, the said court of error being required to draw any inferences of fact from the facts stated in such special case which the court where it was originally decided ought to have drawn.

Enactments
in ss. 19 to
32 to apply to
every civil
court of judi-
cature in
England and
Ireland.

CIII. The enactments contained in sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two of this Act shall apply and extend to every court of civil judicature in England and Ireland.

An Act to amend an Act of the second and third years of King William the Fourth, for amending the representation of the people in Scotland, in so far as relates to the procedure in county elections in that country. [25th May, 1855.]

Whereas it is expedient that the time between the receipt of the writ by the sheriff and the day of election of members to serve in Parliament for counties in Scotland should be shortened: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. Each sheriff to whom any writ for the election of a member to serve for any county or combined counties in Scotland (except Orkney and Shetland) shall be directed, under the provisions of an Act passed in the second and third years of the reign of his late Majesty, intituled "An Act to amend the Representation of the People in Scotland," shall indorse on the writ the day on which he received it, and shall within two days thereafter announce a day for the election, which day shall be not less than six nor more than twelve days in counties or combined counties after the day on which the writ was received, and shall give due intimation thereof as is provided in the said Act.

Sheriff to indorse on the writ the day on which he received it and announce the time for the election.
2 & 3 Wm. 4, c. 65.

II. In the case of Orkney and Shetland the provisions of the said Act, in so far as they relate to the fixing and announcement of the day of election, and the interval to elapse between the receipt of the writ and the day of election, shall remain in full force and effect, anything in this Act contained notwithstanding.

Proviso as to Orkney and Shetland.

III. In all cases in which the provisions of the said Act shall be inconsistent with this Act, and in as far as shall be necessary to give effect to the true intent and meaning of this Act, but no further, the said Act shall be and the same is to such extent hereby repealed; and the said Act shall in all other respects remain in full force and effect, and be as good and effectual to carry this Act into execution, as if the same were herein repeated and re-enacted.

Provisions of recited act so far as inconsistent with this act repealed.

19 & 20 VICT. c. 58.

An Act to amend the Law for the Registration of Persons entitled to vote in the Election of Members to serve in Parliament for Burghs in Scotland. [21st July, 1856.]

Town clerks to cause burgh lists to be printed, and to authenticate them.

XXIX. The town clerk of every burgh shall forthwith, after the 30th day of September in each year, or sooner, if the registration court shall be earlier concluded, cause the lists of voters for such burgh, signed as aforesaid, to be copied and printed in a book, arranged in wards (where the burgh is divided into wards) and in polling districts; each ward or polling district being arranged, as far as conveniently may be, in the alphabetical order of the surnames of the persons registered as voters, or otherwise, as far as conveniently may be, in the alphabetical order of streets, squares, lanes, and other places in which houses are distinguished by numbers, and in which the subjects of qualification are situated; and each such street, square, lane, and other place being arranged according to the numbers of the houses; and the arrangement in all places in which the houses are not distinguished by numbers being according to the alphabetical order of the surnames of persons registered as voters; and the said book shall be so arranged and printed, that the list of voters of and for each and every separate ward, and each and every separate polling district, may be cut out or detached, and ready for the purposes of this Act, or for sale as aforesaid; and the said town clerk shall forthwith after the twenty-first day of October in each year make all such corrections and alterations on the said book as may be necessary to give effect to all decisions of the Court of Appeal, and shall prefix to every name in the said register book its proper number, beginning the numbers from the first name, and continuing them in a regular series down to the last name; and shall cause the said book to be printed off as so corrected; and the said town clerk shall sign the said book so completed, and deliver the same, on or before the 31st day of October, to the sheriff of the county, to be by him kept for the purposes hereinafter and in the said first-recited Act mentioned.

Lists so printed to be the register of voters.

XXX. The said printed book or books so signed as aforesaid by the town clerk of any burgh and delivered to the sheriff shall be the register of persons entitled to vote at any election of a member to serve in Parliament which shall take

place in and for the same burgh between the thirty-first day of October in the year wherein such register shall have been made and the first day of November in the succeeding year; and the town-clerk of every burgh shall keep printed copies of such register for such burgh, and shall deliver copies thereof or of any part thereof to any person applying for the same, upon payment of a price after the rate contained in the table number 2, of the schedule B. hereunto annexed: Provided always, that no person shall be entitled to a copy of any part of any register relating to any ward, or polling district of a burgh, without taking or paying for the whole that relates to such ward or polling district respectively; provided also, that the register of electors now existing shall be the register in force for elections of members of Parliament until the first day of November in the year one thousand eight hundred and fifty-six; provided further, that any merely clerical error which may be found to exist in any such printed book may be competently corrected at any time by the sheriff of the county on its being proved to him to exist; and such correction shall be made by the sheriff writing such correction on such printed book and signing his name and the date of such correction against the same.

XXXIV. The distance of seven statute miles in the first-recited Act mentioned, and therein prescribed, as to the residence of voters for any burgh, shall be understood to be the distance of seven miles as measured in a straight line on the horizontal plane from any point from which such distance is to be measured according to the direction in that behalf given in the said Act: Provided always, that in cases where there is now or shall hereafter be a map of any burgh and of the country surrounding the same, drawn or published under the authority and direction of the principal officers of her Majesty's ordnance, such distance may be measured and determined by the said map.

How distances to be measured.

XLIV. At every future election for a member or members to serve in Parliament for any burgh or district of burghs, the register of voters so made as aforesaid or under the said recited Act, shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in the register in force at such election, and such persons shall not be required to take the oath of possession.

Register to be conclusive evidence of qualification.

11 & 12 VICT. c. 98.

An Act to amend the Law for the Trial of Election Petitions.
[4th September 1848.]

7 & 8 Vict.
c. 103, re-
pealed, ex-
cept as to
acts done,
&c.

Repeal of
7 & 8 Vict.
c. 103, not
to revive
9 Geo. 4,
c. 22, and
certain parts
of 42 Geo. 3,
c. 106, and
47 Geo. 3,
c. 14.

Whereas it is expedient to amend the law for the trial of election petitions: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that an act passed in the eighth year the reign of her present Majesty, intituled "An Act to amend the Law for the Trial of controverted Elections of Members to serve in Parliament," shall be repealed, except as to any act done or any proceeding incident to any election petition presented under the said recited act, all which acts and proceedings shall have effect, and shall, save as hereinafter specially provided, be continued and completed as if this act had not passed: Provided always, that this enactment shall not revive an act passed in the ninth year of the reign of King George the Fourth, intituled "An Act to consolidate and amend the Laws relating to the Trial of controverted Elections or Returns of Members to serve in Parliament," repealed by the said act, nor shall it revive so much of an act passed in the forty-second year of the reign of King George the Third, intituled "An Act for regulating the Trial of controverted Elections or Returns of Members to serve in the United Parliament for Ireland," nor so much of an act passed in the forty-seventh year of the reign of King George the Third, intituled "An Act to amend several Acts for regulating the Trial of controverted Elections or Returns of Members to serve in Parliament, so far as the same relate to Ireland," as requires the parties appearing before any select committee to interchange before the said committee lists of the votes and names of voters to which either of the parties intends to object, and statements in writing respecting the matters which either of the said parties mean to insist upon, contend for, or to object to, or as provides that no witness shall be called or examined to anything not specified in such lists or statements, also repealed by the firstly-recited act.

II. And be it enacted, That every petition presented to the House of Commons within the time from time to time limited by the House for receiving election petitions, and complaining of an undue election or return of a member to serve in Parliament, or complaining that no return has been made according to the requisition of any writ issued for the election of a member to serve in Parliament, or complaining of the special matters contained in any such return, and which petition shall be subscribed by some person who voted or had a right to vote at the election to which the same relates, or by some person claiming to have had a right to be returned or elected thereat, or alleging himself to have been a candidate at the election, shall be deemed an election petition.

What shall
be deemed
election
petitions.

III. And be it enacted, That before any election petition shall be presented to the House a recognizance shall be entered into by one, two, three, or four persons, as sureties for the person subscribing such petition, for the sum of one thousand pounds, in one sum, or in several sums of not less than two hundred and fifty pounds each, for the payment of all costs and expenses which under the provisions hereinafter contained shall become payable by the person subscribing the petition to any witness summoned in his behalf, or to the sitting member or other the party complained of in such petition, or to any party who may be admitted to defend such petition, as hereinafter provided.

Before petition
presented
recognizances to
be entered
into.

IV. And be it enacted, That every person who enters into any such recognizance shall testify upon oath in writing to be sworn at the time of entering into the said recognizance, and before the same person by whom his recognizance is taken, that he is seised or possessed of real or personal estate (or both), above what will satisfy his debts, of the clear value of the sum for which he is bound by his said recognizance; and every such affidavit shall be annexed to the recognizance.

Persons
entering into
recogni-
zances to
make affi-
davits of
sufficiency.

V. And be it enacted, That in every such recognizance shall be mentioned the names and usual places of residence or business of the persons becoming sureties as aforesaid, with such other description of the sureties as may be sufficient to identify them easily; and such recognizance may be in the form or to the effect set forth in the schedule to this act, with such alteration as may be necessary to adapt such form to the circumstances of each case.

Form of re-
cognizance,
as set forth
in schedule.

VI. And be it enacted, that any person by whom an election petition is signed may, instead of procuring a

Persons sign-
ing election
petition may

pay money
into the
bank, instead
of finding
security.

recognizance for the full amount of the sum hereinbefore required, pay into the Bank of England, to the account of the Speaker and the examiner of recognizances, as trustees for the like purposes for which the recognizance is hereinbefore required, any amount of money which he thinks fit, not being less than two hundred and fifty pounds; and in such case the person by whom the petition is signed shall be required to find sureties for so much only of the sum of one thousand pounds as the sum paid into the bank falls short of that sum; and no money shall be deemed for the purposes of this act to be paid into the Bank of England until a bank receipt or certificate for the same is procured, and delivered to the examiner of recognizances.

No petition to
be received
unless in-
dorsed by
the examiner
of recog-
nizances.

VII. And be it enacted, that no election petition shall be received unless at the time it is presented to the House it be indorsed by a certificate under the hand of the examiner of recognizances, that, the recognizance hereinbefore required has been entered into and received by him, with the affidavit thereunto annexed, and, if the recognizance have not been taken for the whole amount, that a bank receipt or certificate for so much money as the recognizance falls short of one thousand pounds has been delivered to him, as hereinbefore required.

How peti-
tions may be
withdrawn.

VIII. And be it enacted, that the petitioner may, at any time after the presentation thereof, withdraw the same, upon giving notice in writing under his hand, or under the hand of his agent, to the Speaker, and also to the sitting member, or his agent, and also to any party who may have been admitted to oppose the prayer of such petition, that it is not intended to proceed with the petition; and in such case the petitioner shall be liable to the payment of such costs and expences as have been incurred by the sitting member or other party complained of in such petition, and also by any party admitted to oppose the prayer of such petition, to be taxed as hereinafter provided.

Speaker to
appoint
examiner of
recogni-
zances.

IX. And be it enacted, that the Speaker of the House of Commons shall appoint a fit person to be examiner of recognizances; and every person so appointed shall hold his office during the pleasure of the Speaker, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the Speaker.

In case of
illness, &c.,
of examiner
of recog-

X. And be it enacted, that in case of the illness, temporary disability, or unavoidable absence of the examiner of recognizances, the Speaker may appoint a fit person to

perform the duties of examiner of recognizances during such illness, disability, or absence; and throughout this act the expression "Examiner of Recognizances" shall be deemed to include and apply to the person so appointed, and for the time being performing such duties.

Recognizances. Speaker to appoint a fit person to perform the duties.

XI. And be it enacted, that every recognizance hereinbefore required shall be entered into, and every affidavit hereinbefore required shall be sworn, before the examiner of recognizances or a justice of the peace, and the said examiner, and also every justice of the peace, is hereby empowered to take the same; and every such recognizance and affidavit taken before a justice, being duly certified under the hand of such justice, shall be delivered to the examiner of recognizances.

How recognizances are to be entered into.

XII. And be it enacted, that on or before the day when any such petition is presented to the House, the names and descriptions of the sureties, when there are sureties, as set forth in the recognizance, shall be entered in a book to be kept by the examiner of recognizances in his office; and the said book, and also the recognizance and affidavits, and the bank receipt for any money paid into the Bank of England, shall be open to the inspection of all parties concerned.

Names of sureties, &c., to be kept in office of examiner of recognizances, and to be open to inspection.

XIII. And be it enacted, that any sitting member petitioned against, or any electors petitioning and admitted parties to defend the election or return, may object to any such recognizance on the ground that the same is invalid, or that the same was not duly entered into or received by the examiner of recognizances, with the affidavit thereunto annexed as hereinbefore required, or on the ground that the sureties or any of them are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same; provided that the ground of objection shall be stated in writing under the hand of the objecting party or his agent, and shall be delivered to the examiner of recognizances within ten days, or not later than twelve of the clock at noon, of the eleventh day after the presentation of the petition, if the surety objected to reside in England, or within fourteen days or not later than twelve of the clock at noon of the fifteenth day after the presentation of the petition, if the surety objected to reside in Scotland or Ireland: Provided also, that if either such eleventh or such fifteenth day happen to be a Sunday, Good Friday,

Recognizance may be objected to for invalidity, or for insufficiency of sureties.

or Christmas Day, it shall be sufficient if such notice of objection be delivered to the examiner of recognizances not later than twelve of the clock at noon of the following day.

Notice of objections to be published in the office of the examiner, and copies may be taken.

XIV. And be it enacted, that as soon as any such statement of objection is received by the examiner of recognizances, he shall put up an acknowledgment thereof in some conspicuous part of his office, and shall appoint a day for hearing such objections, not less than three nor more than five days from the day on which he received such statement; and the petitioner and his agent shall be allowed to examine and take copies of every such objection.

Examiner of recognizances to decide on the objections.

XV. And be it enacted, That at the time appointed the examiner of recognizances shall inquire into the alleged objections, on the grounds stated in the notice of objection, but not on any other ground; and for the purpose of such inquiry the examiner of recognizances may examine upon oath any persons tendered by either party for examination by him, and may also receive in evidence any affidavit relating to the matter in dispute before him, sworn before him, or before any Master of the High Court of Chancery or justice of the peace, each of whom is hereby authorized to take and certify such affidavit; and the examiner of recognizances may, if he think fit, adjourn the said inquiry from time to time until he decide on the validity of such objection, and he may, if he think fit, award costs to be paid by either party to the other, which costs shall be taxed and recovered as hereinafter provided for the costs and expenses of prosecuting or opposing election petitions; and the decision of the examiner of recognizances shall be final and conclusive against all parties.

In case of death of a surety, the petitioner may pay the money into the bank.

XVI. And be it enacted, That if any surety die, and his death be stated as a ground of objection before the end of the time allowed for objecting to recognizances, the petitioner may pay into the Bank of England, on the account of the Speaker and the examiner of recognizances, the sum for which the deceased surety was bound; and upon the delivery of a bank receipt for such sum to the examiner of recognizances, within three days after the day on which the statement of such objection was delivered to the examiner of recognizances, the recognizances shall be deemed unobjectionable, if no other ground of objection thereto be stated within the time before mentioned for stating objections to recognizances.

Examiner of recogni-

XVII. And be it enacted, that if the examiner of recog-

nizances have received any statement of objection to the recognizances to any such election petition, and have decided that such recognizances are objectionable, he shall forthwith report to the Speaker that such recognizances are objectionable; but if he shall have decided that such recognizances are unobjectionable, or if he have not received any such statement of objection, then, as soon as the time hereinbefore allowed for stating any such objection has elapsed after the presentation of the petition, or as soon thereafter as he has decided upon the statement of objection, the examiner of recognizances shall report to the Speaker that the recognizances to such petition are unobjectionable; and every such report shall be final and conclusive to all intents and purposes; and he shall make out a list of all election petitions on which he has reported to the Speaker that the recognizances are unobjectionable, in which list the petitions shall be arranged in the order in which they are so reported upon; and a copy of such list shall be kept in the office of the examiner of recognizances, and shall be open to the inspection of all parties concerned.

zances to
report whe-
ther or not
recogni-
zances are
objection-
able.

XVIII. And be it enacted, that if at any time before the appointment of a select committee, as hereinafter provided, to try any election petition, the Speaker of the House of Commons be informed, by a certificate in writing subscribed by two of the members of the said House, of the death of any sitting member whose election or return is complained of in such petition, or of the death of any member returned upon a double return whose election or return is complained of in such petition, or that a writ of summons has been issued under the great seal of Great Britain to summon any such member to Parliament as a peer of Great Britain, or if the House of Commons have resolved that the seat of any such member is by law become vacant, or if the House be informed, by a declaration in writing subscribed by any such member, and delivered to the Speaker within fourteen days after the day on which any such petition was presented, that it is not the intention of such member to defend his election or return, in every such case notice thereof shall immediately be sent by the Speaker to the general committee of elections, and to the members of the chairmen's panel, hereinafter mentioned, and also to the sheriff or other returning officer for the county, city, borough, district of burghs, port or place, to which such petition relates; and such sheriff or other returning officer shall cause a true copy of such notice to be affixed on or

Proceedings
when the
seat becomes
vacant, or
the sitting
member
declines to
defend his
return.

Voters may become a party to oppose the petition.

Members having given notice of their intention not to defend, not to appear as parties.

Provision for cases of double return where the member complained of declines to defend his return.

near the door of the county hall or town hall, or of the parish church, nearest to the place where such election has usually been held; and such notice shall also be inserted, by order of the Speaker, in one of the next two London Gazettes, and shall be communicated by him to the House.

XIX. And be it enacted, that at any time within fourteen days after the day on which any election petition was presented, or within twenty-one days after the day on which any notice was inserted in the Gazette, to the effect that the seat is vacant, or that the member returned will not defend his election or return, or if either of the said periods expire during a prorogation of Parliament, or during an adjournment of the House of Commons for the Easter or Christmas holidays, then, on or before the second day on which the House meets after such prorogation or adjournment, any person who voted or had a right to vote at the election to which the petition relates may petition the House of Commons, praying to be admitted as a party to defend such return, or to oppose the prayer of such petition; and such person shall thereupon be admitted as a party, together with the sitting member, if he be then a party against such petition, or in the room of such member if he be not then a party against the petition; and every such petition shall be referred by the House to the general committee of elections hereinafter mentioned.

XX. And be it enacted, that whenever the member whose election or return is so complained of in such petition has given notice as aforesaid of his intention not to defend the same, he shall not be afterwards allowed to appear or act as a party against such petition in any proceedings thereupon, and he shall also be restrained from sitting in the House of Commons or voting on any question until such petition has been decided upon.

XXI. And be it enacted, that if in the case of an election petition complaining of a double return the member whose return is complained of in such petition have given notice as aforesaid that it is not his intention to defend his return, and if no party, within the period hereinbefore allowed for that purpose, have been admitted to defend such return, then, if there be no election petition complaining of the other member returned on such double return, it shall be lawful for the last mentioned member or other the persons who subscribed the petition complaining of such double return to withdraw such petition by letter addressed to the Speaker; and thereupon the order for referring such peti-

tion to the general committee of elections shall be discharged, and the House shall give the necessary directions for amending the said double return, by taking off the file the indenture by which the person so declining to defend his return was returned, or otherwise, as the case may require.

XXII. And be it enacted, That in the first session of every Parliament, on the day after the last day allowed by the House of Commons for receiving election petitions, and in every subsequent session, as soon as convenient after the commencement of the session, the Speaker shall by warrant under his hand appoint six members of the House who are willing to serve, and against whose return no petition is then depending, and none of whom is a petitioner complaining of any election or return, to be members of a committee to be called "The General Committee of Elections;" and every such warrant shall be laid on the table of the House, and, if not disapproved by the House in the course of the three next days on which the House meets for the dispatch of business, shall take effect as an appointment of such general committee.

At the beginning of every session the Speaker to appoint a general committee.

XXIII. And be it enacted, That if the House disapprove any such warrant the Speaker shall, on or before the third day on which the House meets after such disapproval, lay upon the table of the House a new warrant for the appointment of six members, qualified as aforesaid, and so from time to time until six members have been appointed by a warrant not disapproved by the House.

If the House disapprove the first appointment, a new appointment to be made.

XXIV. And be it enacted, That the disapproval of the warrant may be either general in respect of the constitution of the whole committee, or special in respect of any member named in the warrant.

Disapproval may be general or special.

XXV. And be it enacted, That the Speaker may, if he think fit, name in the second or any subsequent warrant any of the members named in any former warrant whose appointment has not been specially disapproved by the House as aforesaid.

Members not disapproved by the House may be again named in the warrant.

XXVI. And be it enacted, That after the appointment of the general committee every member appointed shall continue to be a member of the committee until the end of that session of Parliament, or until he cease to be a member of the House of Commons, or until he resign his appointment (which he may do by letter to the Speaker), or until the general committee report that he is disabled by continual illness from attending the committee, or until the committee be dissolved as hereinafter provided.

For what time the appointment shall be.

Vacancies in general committee to be made known to the House, and proceedings suspended.

XXVII. And be it enacted, That in every case of vacancy in the general committee of elections the Speaker, on the first day on which the House meets after such vacancy is known by him, shall make known the vacancy to the House, and thereupon all proceedings of the general committee shall be suspended until the vacancy is supplied as hereinafter provided.

General committee may be dissolved in certain cases.

XXVIII. And be it enacted, That if the general committee of elections at any time report to the House that, by reason of the continued absence of more than two of its members, or by reason of irreconcilable disagreement of opinion, the said committee is unable to proceed in the discharge of its duties, or if the House resolve that the general committee of elections be dissolved, the general committee shall be thereby forthwith dissolved.

How vacancies shall be supplied, and re-appointments made.

XXIX. And be it enacted, That every appointment to supply a vacancy in the general committee, and every re-appointment of the general committee after the dissolution thereof, shall be made by the Speaker by warrant under his hand, laid upon the table of the House on or before the third day on which the House meets after the dissolution of the committee or notification of the vacancy (as the case may be); and the warrant shall be subject to the disapproval of the House in like manner as is hereinbefore provided in the case of the first warrant for the appointment of the general committee; and upon any re-appointment of the general committee the Speaker may, if he think fit, re-appoint any of the members of the former committee who are then willing and not disqualified to serve on it.

Speaker to fix the time and place of first meeting of committee.

XXX. And be it enacted, That the Speaker shall appoint the time and place of the first meeting of the general committee of elections, and the committee shall meet at the time and place so appointed; but no member shall act upon such committee until he have been sworn at the table of the House, by the clerk, truly and faithfully to perform the duties belonging to a member of the said committee, to the best of his judgment and ability, without fear or favour.

General committee to be sworn.

Members necessary to enable the committee to act.

XXXI. And be it enacted, That no business shall be transacted by the general committee of elections unless at the least four members thereof be then present together; and no appointment of a select committee by the general committee, to be made as hereinafter provided, shall be of force unless at the least four members then present of the general committee agree in the appointment.

Committee to regulate

XXXII. And be it enacted, That, subject to the provi-

sions of this Act, the general committee shall make regulations for the order and manner of conducting the business to be transacted by them. their own proceedings.

XXXIII. And be it enacted, That the general committee shall be attended by one of the committee clerks of the House selected for that purpose by the clerk of the House, and such committee clerk shall make a minute of all the proceedings of the committee, in such form and manner as shall be from time to time directed by the committee, and a copy of the minutes so kept shall be laid from time to time before the House of Commons. Clerk to keep minutes of proceedings to be laid before the House.

XXXIV. And be it enacted, That if at the time of the dissolution or suspension of the proceedings of the general committee of elections there be any business appointed to be transacted by such general committee on any certain day, the Speaker may adjourn the transaction of such business to such other day as to him seems convenient. During suspension of proceedings the Speaker may adjourn any business before the general committee.

XXXV. And be it enacted, That every member more than sixty years old shall be wholly excused from serving on election committees, provided that on or before the reading over of the names of such excused member as hereinafter mentioned, or upon his afterwards becoming entitled to make such claim, he claim to be excused, by declaring in his place, or in writing under his hand delivered to the clerk at the table, that he is more than sixty years old; but no member shall be so excused who does not claim to be excused before he is chosen to serve, as hereinafter provided. Members wholly excused from serving.

XXXVI. And be it enacted, That in the first session of every Parliament, on the next meeting of the House after the last day allowed for receiving election petitions, and in every subsequent session on the next meeting of the House after the Speaker has laid on the table his warrant for the appointment of the general committee of elections, the clerk of the House shall read over the names of all the members who have so claimed to be excused. Names of members claiming to be excused to be called over.

XXXVII. And be it enacted, that every member having leave of absence from the House shall be excused from serving on election committees during such leave; and if any member in his place offer any other excuse, either at the reading over of the said names or at any other time, the substance of the allegations shall be taken down by the clerk, in order that the same may be afterwards entered on the Journals, and the opinion of the House shall then be taken thereon; and if the House resolve that the said member ought to be excused he shall be excused from serving. Members temporarily excused from serving.

on election committees for such time as to the House seems fit, but no member shall be so excused who does not claim to be excused before he is chosen to serve; and every member who has served on one election committee, and who within seven days after such committee has made its final report to the House notifies to the clerk of the general committee his claim to be excused from so serving again, shall be excused during the remainder of the session, unless the House at any time resolve, upon the report of the general committee, that the number of members who have not so served is insufficient; but no member shall be deemed to have served on an election committee who on account of inability or accident has been excused from attending the same throughout.

Members temporarily disqualified from serving.

XXXVIII. And be it enacted, that every member who is a petitioner complaining of an undue election or return, or against whose return a petition is depending, shall be disqualified to serve on election committees during the continuance of such ground of disqualification.

A corrected list, distinguishing the excused or disqualified members, to be printed, and distributed with the votes.

XXXIX. And be it enacted, that the clerk of the House of Commons shall make out an alphabetical list of all the members, omitting the names of such members as have claimed to be wholly excused from serving on election committees as aforesaid; and the clerk shall also distinguish in such list the name of every member for the time being excused or disqualified, and shall also note in the list every cause of such temporary excuse or disqualification, and the duration thereof; and such list shall be printed, and distributed with the votes of the House, and the names of all the members so omitted shall be also printed, and distributed with the votes.

List may be further corrected during three days.

XL. And be it enacted, that during three days next after the day of the distribution of such corrected list further corrections may be made in such list by leave of the Speaker, if it appear that any name has been improperly left in or struck out of such list, or that there is any other error in such list.

Selection of members to serve as chairman of election committees.

XLI. And be it enacted, that the list so finally corrected shall be referred to the general committee of elections; and the general committee shall thereupon select, in their discretion, six, eight, ten, or twelve members, whom they think duly qualified to serve as chairmen of election committees; and the members so selected shall be formed into a separate panel, to be called the chairmen's panel, which shall be reported to the House; and while the name of any member is upon the chairmen's panel he shall not be liable or quali-

fied to serve on an election committee otherwise than as chairman; and every member placed on the chairmen's panel shall be bound to continue upon it till the end of the session, or until he sooner cease to be a member of the House, or until, by leave of the House, he be discharged from continuing upon the chairmen's panel: Provided always, that every member of the chairmen's panel who has served on one or more election committees, and who notifies to the clerk of the general committee of elections, his claim to be discharged from continuing upon the chairmen's panel, shall be so discharged accordingly; and every such member shall be excused from serving upon any election committee, either as chairman or otherwise, during the remainder of the session; but no member of the chairmen's panel shall be deemed to have served on an election committee who on account of inability or accident has been excused from attending the same throughout.

XLII. And be it enacted, that after the chairmen's panel has been so as aforesaid selected, the general committee shall divide the members then remaining on such list into five panels, in such manner as to them seems most convenient, but so nevertheless that each panel may contain as nearly as may be the same number of members, and they shall report to the House the division so made by them; and the clerk shall decide by lot at the table the order of the panels as settled by the general committee, and shall distinguish each of them by a number denoting the order in which they were drawn; and the panels shall then be returned to the general committee of elections, and shall be the panels from which members shall be chosen to serve on election committees.

List to be
divided into
five panels.

XLIII. And be it enacted, That the general committee of elections shall correct the said panels from time to time by striking out of them the name of every member who ceases to be a member of the House, or who from time to time becomes entitled and claims as aforesaid to be wholly excused from serving on election committees, and by inserting in one of the panels to be chosen by the general committee, at their discretion, the name of every new member of the House not entitled and not having claimed as aforesaid to be wholly excused, and shall also from time to time distinguish in the manner aforesaid in the said panels the names of the members for the time being excused or disqualified for any of the reasons aforesaid; and the general committee shall, as often as they think fit, report to the House the panels as corrected; and as often as the general

General committee to
correct the
panels from
time to time.

Power to transfer to another panel the names of members obtaining leave of absence.

For supplying vacancies, and increasing the chairmen's panel.

Election petitions to be referred to the general committee ;

who shall make out a list of the same.

committee reports the said panels to the House they shall be printed, and distributed with the votes.

XLIV. And be it enacted, That when leave of absence for a limited time has been granted by the House to any member, the general committee of elections may transfer the name of such member from the panel in which it has been placed to some other panel subsequent in rotation, if they think fit so to do, having regard to the length of time for which such leave of absence has been granted, and to the number of select committees then about to be appointed.

XLV. And be it enacted, That whenever any member of the chairmen's panel ceases to be a member of the House, or is by leave of the House discharged from continuing upon the chairmen's panel, or is so discharged by reason of service under the provision hereinbefore contained, the general committee shall forthwith select another member to be placed upon the chairmen's panel in his room ; and in case it at any time appear to the general committee that the chairmen's panel is too small, they may select two, four, or six additional members to place upon it, so nevertheless that the chairmen's panel shall not at any time consist of more than eighteen members, without the leave of the House first obtained.

XLVI. And be it enacted, That all election petitions received by the House shall be referred by the House to the general committee of elections, for the purpose of choosing select committees, as hereinafter provided, to try such petitions ; and the Speaker shall communicate to the House and to the general committee every report by the examiner of recognizances to him concerning the recognizances to any election petition ; and in every case in which any election petition is withdrawn, or the examiner of recognizances reports to the Speaker that the recognizances are objectionable, the order for referring such petition to the general committee of elections shall be discharged, and no further proceeding shall be had upon such petition ; and the general committee shall make out a list of all election petitions in which the examiner of recognizances has reported to the Speaker that the recognizances are unobjectionable, and in which the proceedings are not suspended, in which list the petitions shall be arranged in the order in which they were so reported upon ; and in every case in which the proceedings in any petition inserted in such list are afterwards suspended the petition shall be struck out of the list, and shall be again inserted at the bottom of the list at the end of such suspension of proceedings.

XLVII. And be it enacted, That when notice of the death or vacancy of the seat of any member petitioned against, or that it is not the intention of such member to defend his election or return, is given to the general committee of elections by the Speaker, as hereinbefore provided, the general committee shall suspend their proceedings in the matter of the petition referred to in such notice, until twenty-one days after the day on which notice of such death or vacancy, or intention not to defend, has been inserted in the Gazette, under the provision hereinbefore contained, unless the petition of some person claiming to be admitted as a party in the room of such member be sooner referred to them.

Where notice of vacancy, or that the sitting member declines to defend his return, is received by the general committee, proceedings to be suspended.

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XLVIII. And be it enacted, That when more than one election petition relating to the same election or return are referred to the general committee of elections, they shall suspend their proceedings in the matter of all such petitions until the report of the examiner of recognizances upon each of such petitions, or such of them as have not been withdrawn, is received by them; and upon receipt of the last of such reports they shall place such petitions at the bottom of the then list of election petitions, bracketed together, and such petitions shall afterwards be dealt with as one petition.

Provision for cases where more than one petition.

XLIX. And be it enacted, That the general committee of elections shall choose the committees to try the election petitions standing in the said list of petitions in the order in which such petitions stand in such list, and they shall from time to time determine how many committees shall be chosen in each week for trying such petitions, and the days on which they will meet for choosing such committees, having regard to the number of select committees which may then be sitting for the trial of election petitions, and to the whole number of such committees then to be appointed, and they shall report to the House from time to time the days appointed by them for choosing such committees.

Committees to be chosen for petitions according to their order in the list.

L. And be it enacted, That if Parliament is prorogued after any election petition has been presented, but before the appointment of a select committee to try such petition, the general committee of elections appointed in the following session shall, within two days after their first meeting, in case the sureties have been then reported unobjectionable, appoint a day and hour for selecting a committee to try the petition so standing over as aforesaid: Provided always,

Committees to be appointed for petitions standing over on a prorogation of parliament.

that if the number of petitions so standing over be so great that the times for selecting committees to try the whole thereof cannot, in the judgment of the general committee, be conveniently appointed within two days after their first meeting, the said general committee shall, within two days after their first meeting, appoint the times for selecting committees to try so many of the said petitions as the said general committee deems convenient, and shall afterwards, from time to time, as soon as conveniently may be, appoint the times for selecting the committees to try the remainder of such petitions.

Notice of time, &c., when any committee will be chosen shall be published with the votes.

LI. And be it enacted, That notice of the time and place at which the committee will be chosen to try any election petition shall be published with the votes, not less than fourteen days before the day on which such committee is appointed to be chosen; and in case the conduct of the returning officer is complained of, such notice shall be sent to him through the post, not less than fourteen days before the day on which such committee is appointed to be chosen; and every such notice shall direct all parties interested to attend the general committee of elections, by themselves or their agents, at the time and place appointed for choosing the select committee; and if (after any such notice has been published with the votes, or sent to the returning officer as aforesaid,) the proceedings in the matter of such petition become suspended, notice of such suspension shall be immediately published with the votes; and in case the conduct of the returning officer is complained of, such notice shall be sent to him through the post.

Notice of suspension of proceedings to be published; and sent to returning officer by post.

LII. Provided always, and be it enacted, That if notice of the death or vacancy of the seat of any member petitioned against, or that it is not the intention of such member to defend his election or return, have been inserted in the Gazette, by order of the Speaker, as hereinbefore provided, and no party has been admitted to defend such election or return, then, if the conduct of the returning officer is not complained of in such petition, it shall not be necessary to insert such petition at the bottom of the then list of petitions, but the general committee of elections shall meet for choosing the select committee to try such petition as soon as conveniently may be after the expiration of the time allowed for parties to come in to defend such election or return, and not less than one day's notice of the time and place appointed for choosing such committee shall be given in the votes; and in such case it shall not be necessary to deliver to the

Provision for cases where the sitting member does not defend, and no party has been admitted to defend.

clerk of the general committee of elections a list of the voters intended to be objected to, as hereinafter is required in other cases.

LIII. And be it enacted, That the general committee of elections may change the day and hour appointed by them for choosing a select committee to try any election petition, and appoint some subsequent day and hour for the same, if in their judgment it be expedient so to do, giving notice in the votes of the day and hour so subsequently appointed; and in every case in which any such change is made by them they shall forthwith report the same to the House, with their reasons for making such change.

General committee empowered to change the day for choosing election committee.

LIV. And be it enacted, That notice shall be published with the votes of the petitions appointed for each week, and of the panel from which committees will be chosen to try such petitions, and each panel shall serve for a week, beginning with the panel first drawn, and continuing by rotation in the order in which they were drawn, and not reckoning those weeks in which no select committee is appointed to be chosen.

Notice of petitions and panels.

LV. And be it enacted, That the parties complaining of or defending the election or return complained of in any election petition shall, except in the case hereinbefore provided for, by themselves or their agents, deliver in to the clerk of the general committee lists of the voters intended to be objected to, giving in the said lists the several heads of objection, and distinguishing the same against the names of the voters excepted to, not later than six of the clock in the afternoon on the sixth day next before the day appointed for choosing the committee to try the petition complaining of such election or return; and the said clerk shall keep the lists so delivered to him in his office open to the inspection of all parties concerned.

Lists of voters intended to be objected to shall be delivered to the clerk of the general committee.

LVI. And be it enacted, That the general committee shall meet at the time and place appointed for choosing the committee to try any election petition, and shall choose from the panel in service four members, not being then excused or disqualified for any of the causes aforesaid, and not specially disqualified for being appointed on the committee to try such petition for any of the following causes; (that is to say,) by reason of having voted at the election, or by reason of being the party on whose behalf the seat is claimed, or related to him or to the sitting member by kindred or affinity in the first or second degree according to the canon law.

Committee for trying petitions to be chosen.

In case general committee do not agree in choosing a committee to try the petition, they shall adjourn.

LVII. And be it enacted, That if at the least four members then present of the general committee of elections do not agree in choosing a committee to try any election petition the general committee shall adjourn the choosing of that committee, and of the remaining committees appointed to be chosen on the same day, to the following day, and the parties shall be directed to attend on the following day, or if such following day happen during an adjournment of the House, then on the day to which the House stands adjourned, and so from day to day until all such committees are chosen, or until the general committee of elections is dissolved, as hereinbefore provided; and the general committee shall not in any case proceed to choose a committee to try an election petition until they have chosen a committee to try every other election petition standing higher in the list aforesaid, the order for referring which has not been then discharged, except in the case where the day originally appointed for choosing a committee has been changed under the provision hereinbefore contained.

Chairman to be chosen by the members on the chairman's panel, and his name communicated to the general committee.

LVIII. And be it enacted, That on the day appointed by the general committee to choose an election committee the members upon the chairman's panel shall select one of such members to act as the chairman of such election committee, and when they have been informed by the general committee that four members of such election committee have been chosen they shall communicate the name of the member so selected by them to the general committee; but no member shall be so selected who would be disqualified from serving on such committee if not upon the chairman's panel: Provided always, that if, with reference to any petition for trying which they are about to appoint a chairman, the members of the chairman's panel receive notice from the Speaker, under the provision hereinbefore contained, of the death or vacancy of the seat of the sitting member petitioned against in such petition, or that it is not his intention to defend his seat, they shall suspend their proceedings with regard to the appointment of a chairman to try such petition until the day appointed by the general committee of elections for selecting a committee to try such petition.

Members upon chairman's panel to make regulations.

LIX. And be it enacted, That the members upon the chairman's panel may from time to time make such regulations as they find convenient for securing the appointment or selection of chairmen of election committees, and for distributing the duties of chairmen among all of them.

When committee cho-

LX. And be it enacted, That as soon as the general

committee of elections has chosen four members of a committee to try any election petition, and has received from the members of the chairmen's panel the name of a chairman to serve on such committee, the parties in attendance shall be called in, and the names of the members so chosen and of the chairman shall be read over to them.

LXI. And be it enacted, That after hearing the said names the parties present shall be directed to withdraw, and the general committee may proceed to choose another committee to try the next petition appointed for that day, and so on until all the committees appointed to be chosen on that day are chosen, or until the choosing of any committee is adjourned as aforesaid; and after any such adjournment the general committee shall not transact any more business on that day, except with regard to those petitions for trying which committees have been previously chosen.

LXII. And be it enacted, That within one half hour at furthest from the time when the parties to any election petition have withdrawn, or if the parties to any other election petition be then before the general committee of elections, then, after such other parties have withdrawn, the parties in attendance shall be again called before the general committee in the same order in which they were directed to withdraw; and the petitioners and sitting member, or such party as may have been admitted as aforesaid to defend the return or election, or their agents, beginning on the part of the petitioners, may object to all or any of the members chosen, or to the chairman, as being then disqualified or excused for any of the reasons aforesaid from serving on the committee for the trial of that election petition, but not for any other reason.

LXIII. And be it enacted, That if at the least four members then present of the general committee be satisfied that any member so objected to is then disqualified or excused for any of the reasons aforesaid, the parties present shall be again directed to withdraw, and the general committee shall proceed to choose from the same panel another committee to try that petition; or if the member to whom any such objection is substantiated be the chairman, they shall send back his name to the members on the chairmen's panel, and the members on the chairmen's panel shall proceed to choose another chairman to try that petition, and shall communicate his name to the general committee, and so as often as the case requires.

sen, the parties to be called in to hear the names read over.

General committee to proceed in order with all the petitions appointed for that day.

Within a certain time parties may object to members on account of disqualification.

If general committee allow the disqualification, a new committee to be chosen.

In the new committee, members not before objected to may be included.

LXIV. And be it enacted, That in the second or any following committee the general committee may, if they think fit, include any of the members previously chosen by them to whom no objection has been substantiated; and no party shall be allowed to object to any member included in the second or any following committee who was not objected to when included in the committee first chosen to try that petition.

When committee chosen, notice to be sent to every member thereof.

LXV. And be it enacted, That when four members and a chairman have been chosen, to none of whom any objection has been substantiated, the clerk of the general committee of elections shall give notice thereof in writing to each of the members so chosen; and with every such notice shall be sent a notice of the general and special grounds of disqualification and excuse from serving hereinbefore mentioned, and of the time and place when and where the general committee will meet on the following day; and notice of the time and place of such meeting shall be published with the votes.

If any member chosen proves a disqualification, another committee to be chosen.

LXVI. And be it enacted that the general committee shall meet on the following day at the time and place mentioned in such notice as last aforesaid; and if any such member then and there prove, to the satisfaction of at least four members then present of the general committee, that for any of the reasons aforesaid he is disqualified or excused from serving on the committee for which he has been so chosen, or if any such member prove, to the satisfaction of at least four members then present of the general committee, that there are any circumstances in his case which render him ineligible to serve on such select committee, such circumstances having regard, not to his own convenience, but solely to the impartial character of the tribunal, the general committee shall proceed to choose a new committee to try that petition, in like manner as if that member had been objected to by any party to the petition; and if within the space of one quarter of an hour after the time mentioned in the notice no member so appear, or if any member so appearing do not prove his disqualification or excuse, to the satisfaction of at least four members then present of the general committee, the select committee shall be taken to be appointed.

Select committee to be reported to the House.

LXVII. And be it enacted, That at the meeting of the House of Commons for the despatch of business next after any such select committee has been appointed the general committee of elections shall report to the House the names

of the select committee appointed, and shall annex to such report all petitions referred to them by the House which relate to the return or election of which such select committee is appointed to try the merits, and all lists of voters which shall have been delivered to them by either party and such report shall be published with the votes.

LXVIII. And be it enacted, That at or before four of the o'clock on the next day on which the House meets for the despatch of business after such report the five members chosen to be the select committee shall attend in their places, and shall before departing the House be sworn at the table by the clerk well and truly to try the matter of the petitions referred to them, and a true judgment to give according to the evidence, and shall be taken to be a select committee legally appointed to try and determine the merits of the return or election so referred to them by the House, and the legality of such appointment shall not be called in question on any ground whatever; and the member so appointed from the chairmen's panel shall be the chairmen of such committee; and they shall not depart the House until the time for the meeting of such committee is fixed by the House, as hereinafter provided.

LXIX. And be it enacted, That if any member of the said select committee do not attend in his place within one hour after four of the o'clock on the day appointed for swearing the said committee (provided the House sits so long, or if not, then within the like time on the following day of sitting), or if, after attending, any member depart the House before the said committee is sworn, unless the committee be discharged, or the swearing of the said committee be adjourned, as hereinafter provided, he shall be ordered to be taken into the custody of the Serjeant-at-Arms attending the House, for such neglect of his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it appear to the House, by facts specially stated, and verified upon oath, that such member was by a sudden accident or by necessity prevented from attending the House.

LXX. And be it enacted, That if any such absent member be not brought into the House within three hours after four of the clock on the day first appointed for swearing the said committee (provided the House sits so long, or if not, then within the like time on the following day of sitting), and if no sufficient cause be shown to the House before its rising whereon the House dispenses with the attendance of such absent member, the swearing of the

Members of select committee to be sworn.

Members of committee not present within one hour after four o'clock to be taken into custody by the serjeant at arms.

If any such member is not present within three hours after four o'clock, the proceedings to be adjourned.

committee shall be adjourned to the next meeting of the House; and all the members of the said committee shall be bound to attend in their places, for the purpose of being sworn, on the day of the next meeting of the House, in like manner as on the day first appointed for that purpose.

If all the members do not attend after adjournment, the committee to be discharged.

LXXI. And be it enacted, That if on the day to which the swearing of the said committee is so adjourned all the members of the committee do not attend, and be sworn, within one hour after four of the clock (provided the House sits so long, or if not, then within the like time of the following day of sitting), or if on the day first appointed for swearing the said committee sufficient cause be shown to the House before its rising why the attendance of any member of the committee should be dispensed with, the said committee shall be taken to be discharged; and the general committee shall meet on the following day, or if such following day happen during an adjournment of the House, then on the day to which the House stands adjourned, and shall proceed to choose a new committee from the panel on service for the time being, in the manner hereinbefore provided, and notice of such meeting shall be published with the votes.

Petitions and lists to be referred to the election committee, and time and place of meeting appointed by the House.

LXXII. And be it enacted, That the House shall refer the petitions and lists annexed to the report of the general committee of elections to the select committee so appointed and sworn, and shall order the said select committee to meet at a certain time to be fixed by the House, which shall be within twenty-four hours of their being sworn at the table of the House, unless a Sunday, Christmas Day, or Good Friday intervene; and the place of their meeting shall be some convenient room or place adjacent to the House of Commons, properly prepared for that purpose.

Committees not to adjourn for more than twenty-four hours without leave of the House.

LXXIII. And be it enacted, That every such select committee shall meet at the time and place appointed for that purpose, and shall proceed to try the merits of the election petition so referred to them, and they shall sit from day to day, Sunday, Christmas Day, and Good Friday only excepted, and shall never adjourn for a longer time than twenty-four hours, unless a Sunday, Christmas Day, or Good Friday intervene, and in such case not for more than twenty-four hours, exclusive of such Sunday, Christmas Day, or Good Friday, without leave first obtained from the House, upon motion, and special cause assigned for a longer adjournment; and if the House be sitting at the time to which such select committee is adjourned, then the business

of the House shall be stayed, and a motion shall be made for a further adjournment for any time to be fixed by the House: Provided always, that if such select committee have occasion to apply or report to the House, and the House be then adjourned for more than twenty-four hours, such select committee may also adjourn to the day appointed for the meeting of the House.

LXXIV. And be it enacted, That no evidence shall be given before the select committee, or before any commission issued by such committee, against the validity of any vote not included in one of the lists of voters delivered to the general committee as aforesaid, or upon any head of objection to any voter included in any such list other than one of the heads specified against him in such list.

Evidence to be confined to objections specified in the lists.

LXXV. And be it enacted, That no member of any such select committee shall absent himself from the same without leave obtained from the House, or an excuse allowed by the House at the next sitting thereof, for the cause of sickness, verified upon the oath of his medical attendant, or for other special cause shown and verified upon oath; and in every such case the member to whom such leave is granted or excuse allowed shall be discharged from attending, and shall not be entitled again to sit or vote on such committee; and such select committee shall never sit until all the members to whom such leave has not been granted, nor excuse allowed, are met; and in case all such members do not meet within one hour after the time appointed for the first meeting of such committee, or within one hour after the time to which such committee has been adjourned, a further adjournment shall be made, and reported to the House by their chairman, with the cause thereof.

No member of committee to absent himself.

Committee not to sit until all be met.

On failure of all meeting within one hour, to adjourn.

LXXVI. And be it enacted, That every member whose absence without leave or excuse is so reported shall be directed to attend the House at its next sitting, and shall then be ordered to be taken into the custody of the Serjeant-at-Arms attending the House, for such neglect of his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it appear to the House, by facts specially stated, and verified upon oath, that such member was by a sudden accident or by necessity prevented from attending the said select committee.

Absentees to be directed to attend the House.

LXXVII. And be it enacted, That an election committee shall not be dissolved by reason of the death or necessary absence of one member or two members thereof only, but the remaining members shall thenceforward constitute the

Committee not to be dissolved by the death or absence of not more

two mem-
bers.

committee; and if there ever be occasion for electing a new chairman on the death or necessary absence of the chairman first appointed, the remaining members of the committee shall elect one of themselves to be chairman, and if in that election there be an equal number of voices the member whose name stands foremost in the list of the committee as reported to the House shall have a second or casting vote.

Committee
reduced to
less than
three by the
non-attend-
ance of its
members to
be dissolved,
unless by
consent.

LXXVIII. And be it enacted, That if the number of members able to attend any such select committee be, by death or otherwise, unavoidably reduced to less than three, and so continue for the space of three sitting days, such select committee shall be dissolved (except in the case hereinafter provided), and another shall be appointed to try the petition referred to such committee; and the general committee and members of the chairmen's panel shall meet for that purpose as soon as conveniently may be after the occasion arises, at a day and hour to be appointed by the general committee, and notice of such meeting shall be published with the votes; and all the proceedings of such former committee shall be void and of no effect: Provided always, that, if all the parties before the committee consent thereto, the two remaining members of the committee, or the sole remaining member, if only one, shall continue to act, and shall thenceforward constitute the committee.

When com-
mittee is de-
liberating,
the room to
be cleared.

LXXIX. And be it enacted, That whenever any such select committee thinks it necessary to deliberate among themselves upon any question arising in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition referred to them, as soon as they have heard the evidence and counsel on both sides relative thereto, the room where they sit shall be cleared, if they think proper, whilst the members of the committee consider thereof.

Questions to
be decided
by a ma-
jority.

LXXX. And be it enacted, That all questions before the committee, if for the time being consisting of more than one member, shall be decided by a majority of voices; and whenever the voices are equal the chairman shall have a second or casting voice; and no member of the committee shall be allowed to refrain from voting on any question on which the committee is divided.

Names of
members
voting for or
against any
resolution to
be reported

LXXXI. And be it enacted, That whenever the select committee is divided upon any question, the names of the members voting in the affirmative and in the negative shall be entered in the minutes of the said committee, and shall

be reported to the House, with the questions on which such divisions arose, at the same time with the final report of the committee.

to the House.

LXXXII. And be it enacted, That every such committee shall be attended by a shorthand writer, appointed by the clerk of the House of Commons, and sworn by the chairman faithfully and truly to take down the evidence given before such committee, and from day to day, as occasion requires, to write or cause the same to be written in words at length for the use of the committee.

Committees to be attended by a shorthand writer.

LXXXIII. And be it enacted, That every such select committee may send for persons, papers, and records, and may examine any person who has subscribed the petition which such select committee are appointed to try, unless it otherwise appear to such committee that such person is an interested witness, and they shall examine all the witnesses who come before them upon oath, which oath the clerk attending such select committee may administer; and if any person summoned by such select committee, or by the warrant of the Speaker of the House of Commons (which warrants the Speaker may issue from time to time as he thinks fit), disobey such summons, or if any witness before such select committee give false evidence or prevaricate, or otherwise misbehave in giving or refusing to give evidence, the chairman of such select committee, by their direction, may at any time during the course of their proceedings report the same to the House for the interposition of the authority or censure of the House, as the case requires, and may, by a warrant under his hand directed to the Serjeant-at-Arms attending the House of Commons, or to his deputy or deputies, commit such person (not being a peer of the realm or lord of Parliament) to the custody of the said Serjeant, without bail or mainprize, for any time not exceeding twenty-four hours, if the House be then sitting, and if not, then for a time not exceeding twenty-four hours after the hour to which the House stands adjourned.

Committee empowered to send for and examine persons, papers, and records.

Witnesses misbehaving may be reported to the House, and committed to the custody of the Serjeant-at-Arms.

LXXXIV. And be it enacted, that where in this act anything is required to be verified on oath to the House of Commons, it shall be lawful for the clerk of the House of Commons to administer an oath for that purpose, or an affidavit for such purpose may be sworn before any justice of the peace or master of the High Court of Chancery.

How oaths to be administered.

LXXXV. And be it enacted, that every person who wilfully gives false evidence before the House of Commons, or before any election committee, or before the examiner of

Giving false evidence to be perjury.

recognizances or taxing officer of the House of Commons, under the provisions of this Act, or who wilfully swears falsely in any affidavit authorized by this Act to be taken, shall, on conviction thereof, be liable to the penalties of wilful and corrupt perjury.

Committee
to decide and
to report
their deci-
sion to the
House.

LXXXVI. And be it enacted, that every such select committee shall try the merits of the return or election complained of in the election petition referred to them, and shall determine by a majority of voices, if for the time being consisting of more than one member, whether the sitting members, or either of them, or any and what other person, were duly returned or elected, or whether the election be void, or whether a new writ ought to issue, which determination shall be final between the parties to all intents and purposes; and the House, on being informed thereof by the committee, shall order such report to be entered in their journals, and shall give the necessary directions for confirming or altering the return, or for ordering a return to be made, or for issuing a writ for a new election, or for carrying the said determination into execution, as the case may require.

Committees
may report
their deter-
mination on
other matters
to the House.

LXXXVII. And be it enacted, That if any such select committee come to any resolution other than the determination above mentioned, they shall, if they think proper, report the same to the House for their opinion, at the same time that they inform the House of such determination, and the House may confirm or disagree with such resolution, and make such orders thereon as to them seems proper.

Committees
not dissolved
by the pro-
rogation of
Parliament.

LXXXVIII. And be it enacted, That if the Parliament be prorogued after the appointment of any select committee for the trial of any election petition, and before they have reported to the House their determination thereon, such committee shall not be dissolved by such prorogation, but shall be thereby adjourned to twelve of the clock on the day immediately following that on which Parliament meets again for the dispatch of business (Sunday, Good Friday, and Christmas Day always excepted); and all proceedings of such committee, and of any commission to take evidence issued under the authority of such committee, shall be of the same force and effect as if Parliament had not been so prorogued; and such committee shall meet on the day and hour to which it is so adjourned, and shall thenceforward continue to sit from day to day in the manner hereinbefore provided, until they have reported to the House their determination on the merits of such petition.

LXXXIX. And be it enacted, that whenever any committee appointed to try an election petition reports to the House that such petition was frivolous or vexatious, the parties, if any, who have appeared before the committee in opposition to such petition, shall be entitled to recover from the persons, or any of them, who signed such petition, the full costs and expenses which such parties have incurred in opposing the same, such costs and expenses to be ascertained in the manner hereinafter directed.

Costs where
petition
reported
frivolous or
vexatious.

XC. And be it enacted, that whenever such committee reports to the House that the opposition made to any such petition by any party appearing before them was frivolous or vexatious, the persons who signed such petition shall be entitled to recover from the party with respect to whom such report is made the full costs and expenses which such petitioners have incurred in prosecuting their petition, such costs and expenses to be ascertained in the manner hereinafter directed.

Costs where
opposition
reported
frivolous or
vexatious.

XCI. And be it enacted, that whenever no party has appeared before any such committee in opposition to such petition, and such committee reports to the House that the election or return, or the omission or insufficiency of a return, complained of in such petition, was vexatious or corrupt, the persons who signed such petition shall be entitled to recover from the sitting members (if any) whose election or return is complained of in such petition (such sitting members not having given notice as aforesaid of their intention not to defend the same), or from any other persons admitted by the House as aforesaid to oppose such petition, the full costs and expenses which such petitioners have incurred in prosecuting their petition, such costs and expenses to be ascertained in the manner hereinafter directed.

Costs where
no party
appears to
oppose a
petition.

XCII. And be it enacted, That if any ground of objection be stated against any voter in any list of voters intended to be objected to as hereinbefore provided, and if such select committee be of opinion that such objection was frivolous or vexatious, they shall report the same to the House of Commons, together with their opinion on the other matters relating to the said petition, and the opposite party shall in such case be entitled to recover from the party on whose behalf any such objections were made the full costs and expenses incurred by reason of such frivolous or vexatious objections, such costs and expenses to be ascertained in the manner hereinafter directed.

Costs upon
frivolous
objections
to voters.

Costs upon
unfounded
allegations.

XCIII. And be it enacted, That if either party make before the said select committee any specific allegation with regard to the conduct of the other party or his agents, and either bring no evidence in support thereof, or such evidence that the committee is of opinion that such allegation was made without any reasonable or probable ground, the committee may make such orders as to them seem fit for the payment, by the party making such unfounded allegation, to the other party, of all costs and expenses incurred by reason of such unfounded allegation, such costs and expenses to be ascertained in the manner hereinafter directed.

Costs, how
to be ascer-
tained.

XCIV. And be it enacted, That the costs and expenses adjudged by any such select committee as aforesaid to be paid, or which otherwise may become payable, under the provisions of this act or the said recited act of the eighth year of her Majesty, to any party prosecuting or opposing or preparing to oppose any election petition, or to any witness summoned to attend before any committee, under the provisions of this or the said recited act, shall be ascertained in manner following; (that is to say), on application made to the Speaker of the House of Commons by any such petitioner, party, or witness, for ascertaining such costs and expenses, not later than three calendar months after the determination of the merits of such petition, or after any order of the House for discharging the order of reference of such petition to the general committee of elections, or after the withdrawal of any petition as hereinbefore provided, the Speaker shall direct the same to be taxed by the examiner of recognizances or by the taxing officer of the House of Commons; and the said examiner or taxing officer shall examine and tax such costs and expenses, and shall report the amount thereof together with the name of the party liable to pay the same, and the name of the party entitled to receive the same, to the Speaker, who shall, upon application made to him, deliver to the party a certificate, signed by himself, expressing the amount of the costs and expenses allowed in such report, with the name of the party liable to pay the same, and the name of the party entitled to receive the same; and such certificate so signed by the Speaker shall be conclusive evidence for all purposes whatever as well of the amount of the demand as of the title of the party therein named to recover the same from the party therein stated to be liable to the payment thereof; and the party claiming under the same shall, upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same.

XCV. And be it enacted, That the examiner of recognizances or the said taxing officer may examine upon oath any party claiming any such costs or expenses, and any witnesses tendered to him for examination, and may receive affidavits, sworn before him, or before any Master of the High Court of Chancery or any justice of the peace, relative to such costs or expenses.

Persons appointed to tax costs empowered to examine on oath.

XCVI. And be it enacted, That the party entitled to such taxed costs and expenses, or his or her executors or administrators, may demand the whole amount thereof, so certified as above, from any one or more of the persons liable to the payment thereof, and in case of nonpayment thereof, on demand, may recover the same by action of debt in any of her Majesty's Courts of Record at Westminster or Dublin, or in the Court of Session in Scotland, in which action it shall be sufficient for the plaintiff to declare that the defendant is indebted to him in the sum mentioned in the said certificate; and the said plaintiff shall, upon filing the said declaration, together with the said certificate and an affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of plea by nil dicit, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to due course of law: Provided always, that the validity of such certificate (the handwriting of the Speaker thereunto being duly verified) shall not be called in question in any court.

Recovery of costs, when taxed.

XCVII. And be it enacted, that in every case it shall be lawful for any person from whom the amount of such costs and expenses have been so recovered to recover in like manner from the other persons or any of them (if such there be) who are liable to the payment of the same costs and expenses, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

Persons paying costs may recover a proportion from other persons liable thereto.

XCVIII. And be it enacted, That if any person having subscribed an election petition presented under this act, or under the said recited act of the eighth year of the reign of her Majesty, neglect or refuse, for the space of seven days after demand, to pay to any witness summoned on his behalf before any committee under the provisions of this or the said recited act the sum so certified as aforesaid by the Speaker, under the authority of this or the said recited act, to be due to such witness, or if such petitioner neglect or refuse, for the space of six months after demand, to pay

Recognizances when to be ex-treated, &c.

to any party opposing the said petition the sum so certified by the Speaker as aforesaid to be due to such party for his costs and expenses, and if such neglect or refusal be, within one year after the granting of such certificate, proved to the Speaker's satisfaction, by affidavit sworn before any Master of the High Court of Chancery (and such Master is hereby authorized to administer such oath, and is authorized and required to certify such affidavit under his hand), in every such case every person who has entered into a recognizance relating to such petition under the provisions of this or the said recited act shall be held to have made default in his said recognizance, and the Speaker of the House of Commons shall thereupon certify such recognizance into the Court of Exchequer in England, if the person who entered into such recognizance reside in England, or into the Court of Exchequer in Ireland if such person reside in Ireland, or into the Court of Exchequer in Scotland, if such person reside in Scotland, and shall also certify that such person has made default therein, and such certificate shall be conclusive evidence of the validity of such recognizance and of such default; and the recognizance, being so certified, if the person who entered into such recognizance reside in England, shall be delivered by the clerk or one of the clerks assistant of the House of Commons into the hands of the Lord Chief Baron or one of the barons of the Court of Exchequer in England, or of some officer appointed by the court to receive the same, or if such person reside in Ireland or Scotland shall be transmitted through the post, in manner hereinafter mentioned, to the chief baron of the Court of Exchequer in Ireland, or to one of the judges of the Court of Session discharging for the time the powers and duties of the Court of Exchequer in Scotland, as the case may require, and in every such case such delivery or transmission of such recognizance shall have the same effect as if the same were created from a court of law, and the validity of such certificate (the handwriting of the Speaker thereunto being duly verified) shall not be called in question in the said court.

Transmission
of recog-
nizances of
parties in
Ireland or
Scotland
through the
post.

XCIX. And be it enacted, That for the purpose of transmitting any such recognizance through the post as aforesaid the clerk or one of the clerks assistant of the House of Commons, or some other person appointed by the Speaker for that purpose, shall carry such recognizance under a cover directed to the Lord Chief Baron or one of the barons of the Court of Exchequer in Ireland, or to one of the judges of the court of session discharging for the time the powers

and duties of the Court of Exchequer in Scotland, as the case may require, to the general post office in London, and there deliver the same to the postmaster-general for the time being, or to such other person as the said postmaster-general shall depute to receive the same (and which deputation such postmaster-general is required to make), who on receipt thereof shall give an acknowledgment in writing, of such receipt to the person from whom the same is received, and shall keep a duplicate of such acknowledgment, signed by the parties respectively to whom the same is so delivered; and the said postmaster-general shall despatch all such recognizances by the first post or mail after the receipt thereof to the person to whom the same is directed, accompanied with proper directions to the postmaster or deputy postmaster of the town or place to which the same is directed, requiring such postmaster or deputy postmaster forthwith to carry such recognizance, and to deliver the same to the person to whom the same is directed, who (or some officer appointed by the Court for that purpose) is hereby required to give to such postmaster or deputy postmaster a memorandum in writing under his hand, acknowledging the receipt of every such recognizance, and setting forth the day and hour the same was delivered by such postmaster or deputy postmaster, which memorandum shall also be signed by such postmaster or deputy postmaster, and by him transmitted by the first or second post afterwards to the said postmaster-general or his deputy, at the general post office in London.

C. And be it enacted, That all monies which shall be received or recovered by reason or in pursuance of the estreating of any such recognizance as aforesaid shall, after deducting all expenses incurred in respect thereof, be forthwith paid by the proper officer for that purpose into the Bank of England, to the account of the Speaker and of the examiner of recognizances, and shall be applied by them, in manner hereinafter mentioned, in satisfaction, so far as the same will extend, of the costs and expenses intended to be secured by such recognizance.

CI. And be it enacted, That any person who has entered into any such recognizance may, before the same has been estreated, pay the sum of money for which he is bound by such recognizance into the Bank of England, to the account of the Speaker and the examiner of recognizances; and upon production to the examiner of recognizances of a Bank receipt or certificate for the sum so paid in, he shall

Monies received under recognizances to be paid into the Bank, and applied in payment of costs.

Surety may pay money into the Bank in discharge of his recognizance.

endorse on the recognizance in respect of which such money has been so paid in a memorandum of such payment, and thereupon such recognizance shall, so far as regards the person by or on whose behalf such money has been so paid, be deemed to be vacated, and shall not afterwards be estreated as against him, but such recognizance shall continue and be in force as regards any other person who has entered into the same.

Where money has been paid into the Bank, the examiner of recognizances to order payment of expenses, and transfer the residue to the account of the party.

CII. And be it enacted, That in every case in which any money is paid into the Bank of England to the account of the Speaker and the examiner of recognizances, as hereinbefore provided, a bank receipt or certificate of the amount so paid in shall be delivered to the examiner of recognizances by the person paying in the same, and such money shall, in the first place, and in such order of payment as the examiner of recognizances in his discretion, but with the approbation of the Speaker, thinks fit, be applied in satisfaction of all the costs and expenses for securing payment of which such investment was made, or so much thereof as can be thereby satisfied, and thereafter the residue (if any) shall be paid to or transferred to the account of the party by whom or on whose account the same was paid in.

Returning officer may be sued for neglecting to return any person duly elected.

CIII. And be it enacted, That if any sheriff or other returning officer shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned to serve in Parliament for any county, city, borough, district of burghs, port or place within Great Britain or Ireland, such person may, in case it have been determined by a select committee appointed in the manner hereinbefore directed that such person was entitled to have been returned, sue the sheriff or other officer having so wilfully delayed, neglected, or refused duly to make such return at his election, in any of her Majesty's courts of record at Westminster or Dublin, or in the Court of Session in Scotland, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit; provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of any proceedings in the House of Commons relating to such election.

Commencement of act.

CIV. And be it enacted, That this Act shall commence and take effect from the end of this session of Parliament.

Provision for election petitions remaining

CV. And be it enacted, That if at the close of the present session of Parliament there be any election petitions before the House, the order for taking which into considera-

tion has not been discharged, and for trying which no committees have been appointed, such election petitions shall, in case the sureties relating thereto have been reported unobjectionable, be tried by committees to be chosen under the provisions of this Act, and shall be referred to the general committee of elections before any petition presented in the next session; and the general committee shall, within two days after their first meeting, appoint a day and hour for selecting a committee to try every such petition; and if the present Parliament be prorogued after the appointment of a select committee for the trial of any such petition as aforesaid, and before they have reported to the House their determination thereon, such committees shall not be dissolved by such prorogation, but shall be adjourned in manner hereinbefore provided in the case in which Parliament is prorogued after the appointment of a select committee for the trial of an election petition, and before they have reported to the House their determination thereon; and in the case of all such petitions as aforesaid, all such further proceedings shall be had with reference thereto as if this Act had been in force when such petitions were presented; and the recognisances entered into in respect of such petitions shall be taken to be and remain in force, and shall take effect for securing payment of all costs and expenses which the petitioners shall be liable to pay, as if the same had been entered into under the provisions of this Act.

at the close
of the present
session.

CVI. And be it declared and enacted, That no recognizance entered into, or affidavit sworn, under the provisions of this Act, shall require to be impressed with any stamp.

No stamps
on recogni-
sances or
affidavits.

CVII. And be it enacted, That in citing this Act, it shall be sufficient in all cases to use the expression "The Election Petitions Act, 1848."

Short title.

CVIII. And be it enacted, That in construing this Act words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular, unless there be something in the subject or the context repugnant to such construction; and the words "oath" and "affidavit" respectively shall mean affirmation in the case of Quakers, or any declaration lawfully substituted for an oath in the case of persons allowed by law to make a declaration instead of taking an oath.

Interpreta-
tion of Act.

CIX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this session of Parliament.

Act may be
amended, &c.

SCHEDULE.

Bz it remembered, That on the day of
in the year of our Lord, 18 , before me A.B. esquire [ex-
aminer of recognizances for the House of Commons, or one
of her Majesty's justices of the peace for the of
], came and acknowledged himself [or
severally acknowledged themselves] to owe to our Sovereign
Lady the Queen the sum of one thousand pounds [or the
following sums, (that is to say,) the said the sum
of the said the sum of the said
the sum of and the said the sum
of], to be levied on his [or their respective] goods
and chattels, lands and tenements, to the use of our said
Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is, that if [*here insert the names of all the petitioners, and, if more than one, add, or any of them*] shall well and truly pay all costs and expenses in respect of the election petition signed by him [*or them*] relating to the [*here insert the name of the borough, city, or county,*] which shall become payable by the said petitioner [*or petitioners*] under the Election Petitions Act, 1848, to any witness summoned in his [*or their*] behalf, or to the sitting member, or other party complained of in the said petition, or to any party who may be admitted to defend the same as provided by the said Act, then this recognizance to be void, otherwise to be of full force and effect.

FORMS.

I.

SESSIONAL ORDERS ON DISPUTED ELECTIONS.

Ordered, That all persons who will question any returns of members to serve in Parliament for any county, city, borough, or place in the United Kingdom, do question the same within fourteen days next, and so within fourteen days, next after any new return shall be brought in.

Ordered, That all members who are returned for two or more places in any part of the United Kingdom, do make their election for which of the places they will serve within one week from and after the expiration of the fourteen days before limited for presenting petitions, provided there be no question upon the return for that place, and if anything shall come in question touching the return or election of any member, he is to withdraw during the time the matter is in debate, and that all members returned upon double returns do withdraw until their returns are determined.

Ordered, That all persons who shall question any return of members to serve in the present Parliament, upon any allegation of bribery and corruption, and who shall in *their petition specifically allege* any payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, *in pursuance or in furtherance of such bribery or corruption*, may question the same at any time within twenty-eight days after the date of such payment, or if this House be not sitting at the expiration of the said twenty-eight days, then within fourteen days after the day when the House shall next meet.

II.

SESSIONAL RESOLUTIONS.

Interference of Peers in Elections.

Resolved, That no peer of this realm except such peers of Ireland as shall for the time being be actually elected, and shall not have declined to serve for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in Parliament.

Resolved, That it is a high infringement of the liberties and privileges of the Commons of the United Kingdom for any lord of Parliament, or other peer or prelate not being a peer of Ireland at the time elected, and not having declined to serve for any county, city, or borough of Great Britain, to concern himself in the election of members to serve for the Commons in Parliament, except only any peer of Ireland, at such elections in Great Britain respectively where such peer shall appear as a candidate, or by himself, or any others be proposed to be elected, or for any lord lieutenant or governor of any county to avail himself of any authority derived from his commission to influence the election of any member to serve for the Commons in Parliament.

Resolution against Corrupt Practices.

Resolved, That if it shall appear that any person hath been elected or returned a member of this House, or endeavoured so to be, by bribery or any other corrupt practices, this House will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices.

Resolutions as to Witnesses.

Resolved, That if it shall appear that any person hath been tampering with any witness, in respect of his evidence to be given to this House, or any committee thereof, or directly or indirectly hath endeavoured to deter or hinder any person from appearing or giving evidence, the same is

declared to be a high crime and misdemeanor, and this House will proceed with the utmost severity against such offender.

Resolved, That if it shall appear that any person hath given false evidence in any case before this House, or any committee thereof, this House will proceed with the utmost severity against such offender.

Classing Election Petitions.

Resolved, That whenever several petitions complaining of undue elections or returns of members to serve in Parliament, shall at the same time be offered to be presented, Mr. Speaker shall direct such petitions to be all of them delivered at the table, where they shall be classed and read in the following order; *viz.*,

Such petitions as complain that no return has been made of a member or members to serve in Parliament, in the first class.

Such as complain of double returns in the second class.

Such as complain of the election or return of members returned to serve for two or more places in the third class.

Such as complain of returns only in the fourth class; and

The residue of the said petitions in the fifth class.

And the names of the places to which such petitions (contained in the first class, if more than one) shall relate, shall, in the first place, be written on several pieces of paper of an equal size; and the same pieces of paper shall be then rolled up, and put by the clerk into a box or glass, and then publicly drawn by the clerk, and the said petitions shall be read in the order in which the said names shall be drawn, and then the like method shall be observed with respect to the several petitions contained in the second, third, fourth, and fifth classes respectively.

III.

FORMS OF SPEAKER'S WARRANTS.

1.—*For the Attendance of Witnesses.*

Whereas a petition of _____, complaining of an undue election and return for the _____ of _____ has been presented to the House of Commons, the matter of which petition is to be tried by a select committee to be appointed under the "Election Petitions Act, 1848."

These are therefore to require you _____ to be and appear before the said select committee, at such time or times as shall be notified to you by the parties, or either of them to the said _____ petition, or their or either of their agents or agent; and to receive and obey such further order as the said select committee to be appointed to try the matter of the said petition shall make concerning the same.

As you will answer the contrary at your peril.
Given under my hand, the _____ day of _____ 1857.
JOHN EVELYN DENISON,
Speaker.

2.—*To produce Papers, Books, or Records.*

Whereas [*as before*]
These are therefore to require you _____ to bring in your custody _____ and therewith to be and appear before the said select committee, at such time or times as shall be notified to you by the parties, or either of them _____ the said petition, or their or either of their agents or agent, and to receive and obey such further order as the said select committee to be appointed to try the matters of the said petition shall make concerning the same.

As you will answer the contrary at your peril.
Given under my hand, the _____ day of _____ 1857.
JOHN EVELYN DENISON,
Speaker.

IV.

Agent's Notification to Witnesses for Attendance.

Election Petition.

Pursuant to the summons of the Right Hon. the Speaker of the House of Commons already served upon you in the matter of the above petition, I, the undersigned, agent for hereby give you notice to be and appear before the select committee appointed to try the matter of the said petition, at the House of Commons, in the city of Westminster, on, &c., at o'clock in the forenoon of that day; and on your arrival in London, in pursuance of this notice, to inform me immediately thereof and of your place of abode.

Dated, &c.

Yours, &c.

V.

Summons by Chairman of Select Committee.

House of Commons.

Select Committee on Petition.

The day of, &c.

A. B., *Chairman.**Ordered,*

That do attend this committee on the
 day of at o'clock.

A. B., *Chairman.*

VI.

Form of Notice by the General Committee.

Election.

Pursuant to the provisions of the "Election Petitions' Act, 1848," Notice is hereby given, that a select committee to try and determine the matter of the election petition complaining of an undue election and return for the borough

of will be chosen by the general committee of elections, on the day of at o'clock in the afternoon, in No. committee room of the House of Commons.

All parties interested are hereby severally directed to attend the said general committee of elections, by themselves, their counsel, or agents, at the time and place above mentioned.

A. B.
Chairman.

House of Commons,
Dated this day of 185 .

VII.

Form of Oath to be administered by the Chairman of the Select Committee to the Short-hand Writer. (11 & 12 Vict. c. 98, s. 82.)

"You shall faithfully and truly take down the evidence given before this committee; and from day to day, as occasion may require, write, or cause the same to be written in words at length for the use of the committee. So help you God."

VIII.

Form of "Warrant of Commitment" of a Witness prevaricating, &c., under hand of the Chairman of the Select Committee. (11 & 12 Vict. c. 98, s. 83.)

To the Serjeant-at-Arms attending the House of Commons, and to his deputy or deputies.

Whereas A. W., on the day of , he having been first duly sworn to give evidence before the select committee then and there duly appointed to try and determine the merits of the petition complaining of an undue election and return for the borough of , did prevaricate and otherwise misbehave himself in giving his evidence upon oath before the said select committee, and he the said A. W. was thereupon then and there directed by the said select committee to be reported by the chairman of the said committee to the House of Commons for and on account of

such prevarication and misbehaviour. These are therefore to command and require you, to take the said A. W. and him safely to keep in your custody, until twelve of the clock at noon of the day of A.D. 185 .
And for your so doing this shall be your sufficient warrant.

Given under my hand, this day of A.D. 185 .
at the election committee room of the House of
Commons. J. S.

*Chairman of the Select
Committee.*

IX.

*Form of request to a Candidate to make a Declaration of
Qualification at the Election.* [1 & 2 Vict. c. 48, s. 3.]

Election

We, A. B. and C. D., whose names are hereunto subscribed, being two registered electors having a right to vote at the present election for , do hereby require you to make and subscribe a declaration of your qualification to be elected as a member of the House of Commons, according to the provisions of the Act passed in the 2nd year of the reign of Queen Victoria, intituled "An Act to amend the Laws relating to the Qualification of Members to serve in Parliament" (a).

(Signed) A. B. } registered electors
C. D. } for the said

X.

Form of Notice of Ineligibility of a Candidate.

Election

I, A. B., a candidate (or, E. F. one of the registered electors for the said borough,) at the present election for the borough of , do hereby give notice to all and every one of the electors for the said borough that C. D. Esquire, who is now a candidate to represent the said Borough in Parliament

(a) The sum of 5s. must be tendered with this request, *ante*, p. 259.

is disqualified and ineligible to be elected and sit in Parliament for the same; [*by reason of his not being now possessed of a sufficient qualification by estate as required by law, or, because he the said C. D. has wilfully refused, or neglected, as the case may be, to make and subscribe a declaration of his qualification when duly requested so to do, or any other ground of ineligibility*] and you the electors for the said borough are hereby required to take notice that all votes given for the said C. D., will be thrown away, and be altogether void and of none effect.

A. B., Candidate.

or, E. F., one of the registered
electors for the said borough.

A notice in this form should be printed on placards, and handed to all the electors personally before they poll.

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